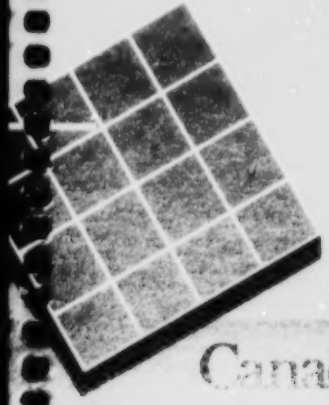
Labour Canada / Travail Canada

MPLOYMENT STANDARDS LEGISLATION

inCanada

1991 EDITION



Canada

EMPLOYMENT STANDARDS LEGISLATION

IN CANADA

91-03011/

Published by Authority of the
Minister of Labour, Government of Canada

Également disponible en français sous le titre
La Législation en matière de normes d'emploi au Canada

©Minister of Supply and Services Canada, 1991

Available in Canada through

Associated Bookstores
and other booksellers

or by mail from

Canada Communication Group - Publishing
Ottawa, Canada
K1A 0S9

Catalogue No. L31-78/1991E
ISBN 0-660-13750-X

Printed in Canada

NOTE FROM THE EDITOR

This document sets out the federal, provincial and territorial legislative provisions in force on January 1, 1991, dealing with the statutory school-leaving age, the minimum age for employment, hours of work and overtime pay, minimum wages, equal pay, the weekly rest-day, general holidays with pay, annual vacations with pay, parental leave, individual and group terminations of employment and the recovery of unpaid wages. An analytical text gives the reader an overview of every subject discussed. In most cases, tables accompany these texts and provide specific information concerning the provisions which exist in each Canadian jurisdiction.

This document is not intended to be a substitute for the relevant statutes themselves. Users are reminded that it is prepared for convenience only and that as such, it has no official sanction. Users are therefore advised to consult the texts of the statutes summarized in this document.

TABLE OF CONTENTS

Division of Legislative Powers 1
Statutory School-Leaving Age 2
Minimum Age for Employment 5
Hours of Work and Overtime Pay 18
Minimum Wages 31
Equal Pay 46
Weekly Rest-Day 61
General Holidays with Pay 64
Annual Vacations with Pay 75
Parental Leave 81
Termination of Employment 94
Recovery of Unpaid Wages 113
List of Acts and Regulations 119
List of References and Quotations 123

TABLES

1. Statutory School-Leaving Ages and Work Exemptions 3
2. Minimum Age for Employment 7
3. General Hours of Work and Overtime Rates 22
4. Minimum Wage Rates for Experienced Adult Workers 34
5. Minimum Wage Rates for Young Workers and Students 35
6. Minimum Rates and Learning Periods for Inexperienced Workers 36
7. Minimum Wage Rates for Other Categories of Employees 37
8. Maximum Deductions Permitted for Board and Lodging 39
9. General Minimum Wage Rates for Experienced Adult Workers Since 1965 40
10. Equal Pay 51
11. Paid General Holidays 66
12. Annual Vacations with Pay 77
13. Maternity Protection and Parental Leave 83
14. Notice of Individual Termination of Employment 97
15. Notice of Group Termination of Employment 106

DIVISION OF LEGISLATIVE POWERS

Both the Parliament of Canada and the provincial legislatures have the power to enact labour laws. The jurisdiction of the provincial and federal governments arises from the Constitution Act, 1867, Sections 91 and 92. Judicial interpretation of these sections gives provincial legislatures major jurisdiction, with federal authority limited to a narrow field.

Provincial authority is derived from the "property and civil rights" subsection of the Constitution Act, 1867. The right to enter into contracts is a civil right, and since labour laws impose certain restrictions on contracts between employers and employees, they fall within provincial authority as property and civil rights legislation. Provinces also have the right to legislate on "local works and undertakings."

Federal jurisdiction arises from the right to regulate certain subjects expressly assigned to Parliament by Section 91 of the Constitution Act, 1867, or expressly excepted from provincial jurisdiction by Section 92. These subjects are of a national, international or interprovincial nature. In addition, Parliament has jurisdiction to regulate works wholly within a province which have been declared by Parliament to be works "for the general advantage of Canada or for the advantage of two or more of the provinces", such as grain elevators, feed mills and uranium mines. By virtue of its exclusive power to regulate certain works and undertakings, Parliament has the incidental power to enact labour laws relating to those works and undertakings.

The Canada Labour Code applies to:

1) Works or undertakings connecting a province with another province or country, such as railways, bus operations, trucking, pipelines, ferries, tunnels, bridges, canals and telegraph, telephone and cable systems;

2) All extra-provincial shipping and services connected with such shipping, such as longshoring;

3) Air transport, aircraft and airports;

4) Radio and television broadcasting;

5) Banks;

6) Defined operations of specific works that have been declared to be for the general advantage of Canada or of two or more provinces, such as flour, feed and seed cleaning mills, feed warehouses, grain elevators and uranium mining and processing; and

7) Federal Crown corporations where they are engaged in works or undertakings that fall within section 91 of the Constitution Act, 1867, or where they are an agency of the Crown, for example the Canadian Broadcasting Corporation and the St. Lawrence Seaway Authority.

The jurisdiction of Parliament is generally limited to the above industries, with possible additions arising from subsequent judicial decisions.

In addition, Parliament has exclusive jurisdiction to pass laws dealing with the Yukon and Northwest Territories. However, Parliament has enacted legislation to grant to territorial governments the power to legislate on property and civil rights and matters of a local and private nature. As a result, the territorial governments have virtually the same legislative powers with regard to labour laws as the provinces.

STATUTORY SCHOOL-LEAVING AGE

HISTORICAL BACKGROUND

The idea of compulsory attendance at school has been held in the best interest of society since the late 19th century, the time of the industrial revolution, when the truancy acts and the public instruction acts were first being introduced. Of course "skipping" school was only a syptom. These laws addressed very pressing problems of the time, as the following passage denotes:

> "The children to whom the Act applies include children found begging, receiving alms, thieving in public places, sleeping at night in the open air, loitering about in public places after nine o'clock in the evening, associating or dwelling with a thief, drunkard or vagrant, engaging in street trades, and in cases of girls under sixteen years of age and boys under twelve years of age, children who are habitual delinquents or incorrigible, or who by reason of the neglect, drunkenness, or other vice of their parents, are growing up without salutary parental control and education, or in circumstances exposing them to an idle and dissolute life, (...) [and] are in peril of loss of life, health or morality (...)."[1]

Thus, it is not surprising to find that The Adolescent School Attendance Act of Ontario, 1919, provided for school attendance officers "who could not only deal with the fact of non-attendance but be able to report upon the cause of non-attendance and recommend action thereon."[2] These attendance officers replaced the earlier truant officers and were "properly qualified". Nonetheless, as with contemporary laws on this matter, there was provision for:

> "...some necessary exceptions, such as cases of physical incapacity, persons who have passed the matriculation examination, and children between fourteen and sixteen who have been given home permits for domestic reasons, and (...) in rural areas compliance with the general law is optional on the part of the parent, but not on the part of the child."[3]

THE PRESENT SITUATION

In all provinces there is a school attendance law which makes it compulsory for children between specified ages to attend school. Exceptions are permitted where a child is unable to attend because of illness or other unavoidable cause and, in most provinces, because of distance from school (where no conveyance is provided) or lack of school accommodation. Some acts stipulate that a child may be excused from attendance before reaching the statutory school-leaving age if he or she has already attained a specified academic standing. An exception may also be granted in special cases, if it appears to be in the interest of the child to be excused from school attendance, or where the child is certified to be under efficient instruction elsewhere.

In several provinces, a child may be temporarily exempted from attending school on the application of a parent or guardian, if the child's services are required for necessary farm or home duties, for employment, or other valid purposes.

The employment of children of school age during school hours is forbidden unless a child is excused for any reason provided in the acts. The school-leaving age in each province and territory and the provisions for exemption for employment are shown in the table below.

1. STATUTORY SCHOOL-LEAVING AGES AND WORK EXEMPTIONS

Jurisdiction and Legislation	School-leaving Age	Work Exemptions
Alberta The School Act	16	Work experience program approved by the Minister of Education, the Director of Employment Standards and the parents of the children.
British Columbia School Act	16	
Manitoba The Public Schools Act	16	Over 15, with certificate signed by parent or guardian, attendance officer and superintendent of schools.
New Brunswick Schools Act	16 -- unless grade 12 passed.	For not more than six weeks in each school term if minister agrees with reasons for parents' application.
Newfoundland The School Attendance Act	15 -- must attend to end of school year.	For period stated in certificate if services needed for maintenance of self or others. If child under 12, for not more than two months in a school year except with approval of Minister.
Nova Scotia The Education Act	16	If 12, for not more than six weeks in a school year if services needed for home duties or other necessary employment. If 13, with employment certificate if services needed for maintenance of self or others; medical certificate may be required.
Ontario Education Act	16 -- unless secondary school or equivalent completed. Must attend to end of school year.	
Prince Edward Island School Act	16	If grade 12 completed or minister certifies exemption from school attendance.

1. STATUTORY SCHOOL-LEAVING AGES AND WORK EXEMPTIONS (continued)

Jurisdiction and Legislation	School-leaving Age	Work Exemptions
Québec Education Act	16	For not more than six weeks in a school year to allow student to carry out urgent work at the request of his or her parents, and approved by the school board.
Saskatchewan Education Act (1978)	16 -- unless eighth grade or equivalent completed and exempted by superintendent.	Work experience program approved by the Board of Education.
Northwest Territories School Act	15 -- must attend to the end of the school year if after December 31, or unless grade eight or equivalent passed. Also where distance from or lack of school accommodation prevents attendance.	
Yukon Territory School Act	16 -- unless for unavoidable cause, or has reached a standard equal to or higher than school's standard, or being instructed in a manner and to a standard satisfactory to the superintendent.	

MINIMUM AGE FOR EMPLOYMENT

HISTORICAL BACKGROUND

> "Those who have had access to the report made upon the conditions under which mining was carried on in England in the first half of the nineteenth century, conditions so brutalizing and degrading that it is difficult to believe that they could have been tolerated in any professedly Christian country, will understand why it has been thought necessary in The Mining Act of Ontario to prohibit the employment of any male person under the age of sixteen years in or about any mine, or under the age of eighteen years below ground in any mine, and to prohibit entirely the employment of girls and women in mining work, except in a clerical capacity. Similar provisions may be found in the mining laws of almost every civilized country."[4]

This was the state of the legislation at the turn of the century, and minus the provisions applying to women, it is still the case in the mining industry today.

Factory acts, which "dealt with the employment of children, young girls and women in shops", became widespread in Canada at the beginning of this century. These acts were founded upon similar English legislation that had been adopted around 1835 and applied in Canada through authority of the Crown. They generally established that no person under the age of 14 could be employed in a factory, with certain exceptions, and that no child under the age of 12 could be employed in any shop. No one under 14 years of age could be employed during school hours, and no one under 12 could be employed outdoors.

Many other laws prohibited or regulated occupations in which children could be employed. Children's protection acts regulated the employment of children in street trades, establishing a minimum age for employment, and the hours within which they would be tolerated. Temperance acts, municipal acts, and shops regulation acts often restricted access to certain occupations, and limited this access to specified times of the day.

THE PRESENT SITUATION

In the provincial jurisdictions, the minimum age for employment is set by a variety of legislation: employment standards acts, child welfare acts, factory or industrial safety laws, minimum wage orders, mining acts, and apprentices and tradesmen's qualification acts.

The employment of a young person below a certain age is prohibited: in Alberta without the written consent of a parent or guardian; in British Columbia without the permission of the director of employment standards; in Manitoba without the permission of the minister; in New Brunswick without the written authorization of the Occupational Health and Safety Commission; in Newfoundland without holding a licence requiring parental consent; and in Nova Scotia and Québec, during school hours, unless a work certificate has been issued to the child.

Moreover, most jurisdictions establish by regulation those occupations in which young persons may or may not be employed, according to the likelihood that such occupations may be injurious to their life, health, education or welfare. Some occupations which permit the employment of young persons are further regulated by special conditions such as supervision of an adult, prohibition to work between certain hours and limited hours of work per day or week.

The Canada Labour Code, Part III, and regulations, do not set an absolute minimum age for employment, but lay down conditions under which persons under 17 years may be employed in federal undertakings. A person under 17 may be employed in a federal industry only if: he or she is not required to be in attendance at school under the laws of the province; the employment is not likely to endanger health or safety; and is not underground in a mine or in work prohibited for young workers under the Explosives Regulations, the Atomic Energy Control Regulations or the Canada Shipping Act.

Employment for workers under 17 is subject to two further conditions: that an employee under 17 is not required or permitted to work between 11 p.m. and 6 a.m.; and that the employee is paid not less than the minimum wage, unless undergoing on-the-job training under an approved training plan.

The Canada Shipping Act fixes a minimum age of 15 for employment at sea.

Many places of employment, such as mines, logging operations, construction sites, designated trades, etc., are still considered unsuitable for young persons or children.

In all jurisdictions, a person under 16 years of age cannot be employed in a designated trade, or, in other words, become an apprentice before that age.

Construction projects are off-limits to persons under 16 in Nova Scotia, in Ontario (unless that person has attained the age of 15 and has been excused from attendance at school), Prince Edward Island, and in Saskatchewan. In the Northwest Territories, the minimum age for employment in the construction industry is 17.

Mines Acts in all provinces but Prince Edward Island (which has no mining operations) fix the minimum age for employment in mines. It varies from 16 to 21 years of age. Usually, persons under 18 are not permitted to work underground, or at the face of an open-pit site, but persons aged 16 or over may be employed above ground.

In addition, many provinces have special provisions that regulate the employment of young persons (from 12 to 18 years old) in entertainment. Moreover, in certain provinces, persons under 16 cannot engage in any trade or occupation in a place to which the public has access between the hours of 9 p.m. and 6 a.m. the following day.

2. MINIMUM AGE FOR EMPLOYMENT

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
Federal	Canada Labour Code	under 17	Only if not required to be at school under provincial legislation and the work involved falls outside excluded categories and is unlikely to endanger health or safety. Never between 11 p.m. and 6 a.m.	Canada Shipping Act	under 15	Cannot be employed at sea.
				Explosives Act and Regulations	under 18	Cannot be employed in an explosives factory or magazine or in a magazine for fireworks. Cannot be employed to drive a vehicle containing explosives or to look after a parked vehicle containing explosives overnight.
					under 21	Cannot be employed to drive a vehicle containing more than 2 000 kilograms of explosives.
				Atomic Energy Act and Regulations	under 18	Cannot be employed as an atomic radiation worker.
Alberta	The Employment Standards Code and Regulation	12 to 15	May be employed as a delivery person or a clerk in a retail store, a clerk or a messenger in an office, a delivery person of newspapers, flyers or handbills. Not during school hours, and never between 9 p.m. and 6 a.m. For no more than 8 hours in a day, two on a school day. With written consent of parent or guardian.	Child Welfare Act	12 or more	Entertainment: licence for employment from Child Welfare Commission necessary. Commission will assure itself of the absence of possible moral or physical injury and of the child's welfare.
				The Coal Mines Safety Act	under 17	Cannot work below ground, but may be employed in the mine office or on the surface.

2. MINIMUM AGE FOR EMPLOYMENT (continued)

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
Alberta (continued)		15 to 18	May not be employed in the retail business, in a hotel, motel or restaurant between the hours of 9 p.m. and the following 12:01 a.m. unless constantly supervised by an adult, and never between the hours of 12:01 a.m. and 6 a.m. In other businesses, the young person can be employed between the hours of 12:01 a.m. and 6 a.m. only with written consent from parent or guardian and under constant supervision of an adult.	The Manpower Development Act and Regulations	under 16	Cannot be employed in a designated trade. Apprentices must be 16 years of age and over.
British Columbia	The Employment Standards Act and Regulations	under 15	Not without permission of the director of employment standards, and only under conditions of such permit. But the Act does not apply to members of certain specified professions, nor to students in a work experience or occupational training program, persons employed in a private residence to attend to a child, or a disabled or infirm (etc.) person, nor to persons receiving income under a specified employment incentive program. This provision also does	The Mines Act	under 18	Cannot be employed below ground. But a person who has reached the age of 17 may be employed underground for the purpose of training.

2. MINIMUM AGE FOR EMPLOYMENT (continued)

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
British Columbia (continued)			not apply to artists, musicians, actors or performers, to disabled employees of a charity receiving therapy, and to various other occupations.			
Manitoba	The Employment Standards Act	under 16	Cannot be employed in any operation where manual labour and /or machinery is used.	Operation of Mines Regulation under the Workplace Safety and Health Act	under 18	Cannot be employed underground or at the face of an open pit or quarry.
		under 18	May be prohibited by regulation to be employed in any place where the work is deemed to be dangerous, unwholesome or unhealthy.	The Apprenticeship and Tradesmen's Qualifications Act	under 16	Cannot work in a designated trade. Apprentices must be at least 16 years of age.
	Public School Act	under 16	Not during the hours in which the child is required to be in attendance at school.			
New Brunswick	Employment Standards Act	under 14	Cannot be employed in: any industrial undertaking; the forest industry; the construction industry; a garage or service station; a hotel or restaurant; a theatre, dance hall or shooting gallery; as an elevator operator; or in any other occupation prescribed by regulation.	The Industrial Training and Certification Act	under 16	Cannot work in designated trades. Apprentices must be at least 16.

2. MINIMUM AGE FOR EMPLOYMENT (continued)

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
New Brunswick (continued)		under 16	Not in employment that is or is likely to be unwholesome or harmful to the person's health, welfare or moral or physical development. For no more than 6 hours in a day, 3 on a school day, for a total of no more than 8 hours attending school and working. Never between 10 p.m. and 6 a.m. the following day. The Director can issue a permit granting a special exemption to the preceding rules, provided that he is satisfied on reasonable grounds that such employment will not contravene the Occupational Health and Safety Act, prejudice attendance at school or capacity to benefit from instruction and has been assented to by the parent or guardian.			
	Schools Act	under 16	Not during hours of required school attendance.			

2. MINIMUM AGE FOR EMPLOYMENT (continued)

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
Newfound-land	The Labour Standards Act	under 16	Not in work that is likely to be unwholesome or harmful to health and prejudicial to school attendance. Some occupations are prohibited by order of the Lieutenant-Governor. Never during school hours and between the hours of 10 p.m. and 7 a.m. May not work more than 3 hours on a school day, and the total hours of school and work may not exceed 8. Must have a rest period of at least 12 consecutive hours per day. Not while a strike or lock-out of employees is in progress.	Mines (Safety of Workmen) Regulations under the Regulation of Mines Act	under 18 under 20	Cannot be employed underground in a mine. Cannot operate machinery for hoisting, lifting or haulage. Cannot charge or fire blasting holes. Cannot be employed at the transmission of signals and orders for putting machines in motion.
		under 14	Not unless the work is prescribed work within prescribed undertakings.	The Apprentice-ship Act	under 16	Cannot work in designated trades. Apprentices must be 16 or older.
	The Child Welfare Act	12 to 14	May be employed as messengers, vendors of newspapers and small wares, shoe shiners or pin boys. Not after 8 p.m. in winter months or 9 p.m. the rest of the year. Must hold a licence requiring parental consent.			
Nova Scotia	Labour Standards Code	under 16	Cannot be employed in an industrial undertaking, the forest industry, garages and service	Coal Mines Regulation Act	under 18½	Cannot work below ground.

2. MINIMUM AGE FOR EMPLOYMENT (continued)

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
Nova Scotia (continued)			stations, hotels and restaurants, the operating of elevators, theatres, dance halls, shooting-galleries, bowling-alleys, billiard and pool rooms and other work prohibited by regulation, unless employed in a family business.	Metalliferous Mines and Quarries Regulation Act	under 16	Cannot work below ground nor above ground.
				Construction Safety Regulations under the Occupational Health and Safety Act	under 16	Cannot be employed on a construction project.
		under 14	Cannot do work that is likely to be unwholesome or harmful to health or prejudicial to school attendance. For no more than 8 hours a day, or 3 on a school day unless authorized. May not work on a day when school and work hours exceed 8. Not between 10 p.m. and 6 a.m.	Apprenticeship and Tradesmen's Qualification Act	under 16	Cannot enter into an apprenticeship agreement.
	Education Act and Regulations	under 16	Not during school hours, unless a work certificate has been issued to the child.			
Ontario	Occupational Health and Safety Act and Regulations	under 14	Cannot be employed in or about any industrial establishment.	The Child Welfare Act	under 16	Cannot engage in any trade or occupation in a place to which the public has access, between the hours of 9 p.m. and 6 a.m. May be employed in public entertainment, but only with the approval of the Children's Aid Society and after ensuring proper
		under 15	May not be employed in or about a factory. But may be employed elsewhere if the work is unlikely to endanger the child's safety.			

2. MINIMUM AGE FOR EMPLOYMENT (continued)

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
Ontario (continued)		under 16	Not permitted in or about a logging operation. Nor in or about a construction project, unless the child has attained the age of 15 and has been excused from attending school. Not permitted to be in or about a mine or a mining plant.			provisions for the health and treatment of the child
		16 to 18	Not permitted in an underground mine or at the working face of a surface mine.	Apprenticeship and Tradesmen's Qualification Act and Regulation	under 16	Cannot work in designated trades. An apprentice must be at least 16 years of age and have a grade 10 standing or the equivalent, or have the qualifications prescribed in the regulations for the trade.
	Education Act	under 16	Never during school hours, unless secondary school, or equivalent, completed.			
Prince Edward Island	The Youth Employment Act	under 16	Unless in a family business or a business prescribed in a regulation, a person under the age of 16 cannot be employed in the construction industry or during certain times of the day (such as during normal school hours and during the night), or if the employment would be harmful to the health, safety, moral or physical development of the young person. The Act does not apply to employment pursuant to any course of	Apprenticeship and Trades Qualification Act	under 16	Cannot work in designated trades. An apprentice must be at least 16 years of age.

2. MINIMUM AGE FOR EMPLOYMENT (continued)

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
Prince Edward Island (continued)			study at a trade school registered under the Trade Schools Act. Maximum hours of employment are prescribed per school day, per non-school day and per week. The inspector of Labour Standards may exempt young persons from the limitations on allowed hours of work provided certain conditions are met.			
Quebec			(This subject used to be covered by the Industrial and Commercial Establishments Act. This Act was replaced, effective January 1, 1981, by An Act Respecting Occupational Health and Safety, which contains no such provision.)	The Construction Safety Code	under 18	Cannot work on a hoisting apparatus, nor be employed at the controls of hoisting or moving equipment. Not underground nor at the face of an open-pit site, nor in excavations or trenches.
	Education Act	under 16	Not during school hours, unless an exemption has been granted by the school board, at the request of the student's parents, for not more than six weeks to carry out urgent work.	Manpower Vocational Training and Qualification Regulation	under 16	Cannot become an apprentice in the designated trades before 16.

2. MINIMUM AGE FOR EMPLOYMENT (continued)

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
Saskatchewan	Minimum Wage Order No. 2 (1931)	under 16	Cannot be employed in any educational institution, hospital, nursing home, hotel or restaurant.	Apprenticeship and Tradesmen's Qualification Act	under 16	Cannot work in designated trades. An apprentice must be at least 16 years of age.
	Education Act	under 16	Not during school hours.			
	The Family Services Act	under 16	Not at a time or place where such employment is detrimental to the child.	Occupational Health and Safety Act and Regulations	under 16	Cannot be employed at or about any construction site, work of engineering construction, trench or excavation; at any pulp mill, sawmill or wood-working establishment; in the vicinity of industrial processes at any factory; inany silo, storage bin, vat, hopper, tunnel, shaft, sewer or other confined space; on the cutting line of any packing plant or the evisceration line of any poultry plant; in any forestry or logging operation; on any drilling or servicing rig; as an operator of any heavy mobile equipment any crane or other heavy hoisting equipment; nor as an operator of a forklift truck or similar mobile equipment within a place of employment or in the vicinity of other workers.

2. MINIMUM AGE FOR EMPLOYMENT (continued)

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
Saskatchewan (continued)					under 18	Cannot work underground or at the working face of an open-pit mine, nor as a radiation worker, nor in any activity for which respiratory protective equipment is required by any regulation made under the Act, except where that work is performed under closeand competent supervision. Cannot work in any asbestos process, nor in any place where asbestos is likely to be present, except if in apprenticeship.
Northwest Territories	Labour Standards Act	under 17	May be employed in any occupation except in such occupations and subject to such conditions as may be prescribed by regulation.	Employment of Young Persons Regulation	under 17	Cannot be employed in the construction industry without the written approval of a labour standards officer.
	Employment of Young Persons Regulation	under 17	Not in a place liable to be detrimental to the health, education or moral character of the young person. Never between the hours of 11 p.m. and 6 a.m. without the written approval of a labour standards officer.	Apprentices and Tradesmen's Act	under 16	Cannot be employed in a designated trade. Apprentices must be at least 16 years of age.
				Mining Safety Act	under 16	Cannot be employed in or about a mine.

2. MINIMUM AGE FOR EMPLOYMENT (continued)

Jurisdiction	General Provisions			Special Provisions		
	Legislation	Age Group	Application	Legislation	Age Group	Application
Northwest Territories (continued)					under 18	Cannot be employed underground or at the face of any open cut working, pit or quarry.
					under 21	Cannot operate a hoist at a mine.
Yukon Territory	Employment Standards Act	under 17	May be employed in any occupation except in such occupations and not contrary to such conditions as may be prescribed by regulation.	Apprentice Training Act	under 16	Cannot work in a designated trade. Apprentices must be at least 16 years old.
				Mine Safety Regulations under the Occupational Health and Safety Act	under 16	Cannot be employed in or about any mine.
					under 18	Cannot be employed underground or at the working face of a surface mine.
				Radiation Protection Regulations under the Occupational Health and Safety Act	under 18	Cannot be employed as an X-ray worker, unless undergoing training and is under the direct supervision of an X-ray worker.

HOURS OF WORK AND OVERTIME PAY

HISTORICAL BACKGROUND

> "The rationale for hours legislation appears to be somewhat uncertain. It may be concerned with physical well-being as is daily and weekly rest legislation and health and safety laws, it may be in the nature of minimum wage legislation, as is clearly the case in so far as it requires the payment of an overtime rate, or it may have a broader social or economic purpose connected with unemployment."[6]

Whatever the reasons for having hours of work legislation today, it is clear that such legislation was originally enacted to palliate certain abuses made possible by centuries old *laissez-faire* policies. By the turn of the century, Factory Acts and Mining Acts, the forerunners of modern child labour, hours of work and industrial health and safety laws, had been passed in most provinces. Prior to controls imposed during World War I:

> "The basis of regulations of hours during this precedent-setting period was narrow. Essentially the controls were to protect worker health against the ill effects of long hours of work and to underwrite public health and safety. The idea of limiting hours of work to spread the available work among more people did not come to the fore until later."[7]

Like the minimum wage legislation, the hours of work provisions applied at first only to women and children. In many jurisdictions, night work was proscribed for these labourers. "It was reasoned that health and morals of women might be threatened by night work thus warranting this regulation".[8]

The provisions of the Ontario Factory, Shop and Office Building Act of 1913, were typical, whereby:

> "The hours of employment are limited as follows: No person of any of the classes protected by the Act may be employed for more than ten hours in one day, unless some other arrangement of hours of labour per day has been made for the sole purpose of giving a shorter day's work on such day of the week as may be arranged, and no such person may be employed for more than sixty hours in any one week. The hours of labour are not to be earlier than seven o'clock in the forenoon or later than half past six in a factory, or six o'clock in the afternoon in a shop, unless a special permit in writing is obtained from the Inspector (...)"[9]

THE PRESENT SITUATION

> "There is little consistency across the country in legislation on hours of work and overtime. In some jurisdictions there is real regulation of the permitted hours of work and in others there is none; in some there is an elaborate mechanism for creating exceptions and in others bureaucracy is seldom involved; in some the overtime pay provisions are apparently intended to protect all employees, in others only those working at the minimum wage level."[10]

Maximum and Standard Workweek

There are, nonetheless, two basic concepts to distinguish when dealing with hours of work provisions: the standard workweek and the maximum workweek. Sometimes the law only provides that where the standard workday or workweek is exceeded, overtime must be paid. But some laws, in addition to standard hours of work, also provide a legal maximum number of hours per day or per week, in excess of which an employee is not permitted to work.

It has always been a recognized prerogative of the employer to fix the hours of work of his employees, within certain limits laid down by law. In some jurisdictions the maximum workweek seems to be an absolute maximum whereby employees may not be permitted to work any hours in excess of those stipulated. In other cases, employees may not be required to work any excess hours, which means that in practice the employees can refuse the overtime work scheduled for them.

The Canada Labour Code sets a standard workday of eight hours and a standard workweek of 40. The following provinces also have an eight-hour day and 40-hour week standard: British Columbia, Manitoba, Newfoundland (for shop employees) and Saskatchewan, as well as the Yukon Territory and the Northwest Territories. The other jurisdictions establish a variety of standard workdays or workweeks. Alberta has a standard of eight hours in a day and 44 hours in a week. New Brunswick, Newfoundland (other than shop employees), Ontario and Québec have standard workweeks set at 44 hours. Nova Scotia and Prince Edward Island have standard workweeks of 48 hours.

Maximum hours of work are set at 44 hours per week in Saskatchewan, and at 48 hours per week in the federal jurisdiction. Ontario also has a maximum workweek of 48 hours, and a maximum workday of eight hours. The Northwest Territories have maximum workdays of 10 hours, and maximum workweeks of 60 hours. Alberta provides that an employee's hours of work must be confined to a period of 12 consecutive hours each day. In Newfoundland, the maximum hours are 16 per day. British Columbia, New Brunswick, Nova Scotia, Prince Edward Island, and Québec have set no maximum hours of work. Manitoba's maximum hours are the same as the standard hours of work.

Overtime

The overtime rate is payable to the employees for each hour or part of an hour they work in excess of the standard hours.

New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island have established the overtime rate as being one and one-half times the minimum wage. All other jurisdictions stipulate that the overtime rate is equivalent to time and one-half the employee's regular rate of pay. Effective April 1, 1991 Prince Edward Island's overtime rate will also become time and one-half the employee's regular rate of pay. British Columbia further provides that hours in excess of 11 in a day or 48 in a week must be remunerated at twice the regular rate. Subject to certain conditions, an employer and its employees in Alberta may agree to replace the payment of overtime by paid leave. A similar provision exists in Québec where an employer may, at the request of the employee or in cases provided for by a collective agreement or decree, replace the payment of overtime by paid leave equivalent to the overtime worked plus 50 percent.

Exclusions

The lists of exclusions from hours of work and overtime pay provisions in each jurisdiction are usually extensive. In British Columbia, for example, nearly 30 categories of employees are excluded. The most common exclusions are students and members of designated professions, domestics, fishermen, farm workers and managerial staff. The Canada Labour Code excludes managers, superintendents and certain professional employees.

Variations of Work Time

Because some types of employment may call for a more flexible arrangement of work hours, variations of the worktime formulas may be permitted by the statutes.

The averaging of hours over a period of two or more weeks, for example, can be authorized under the terms of the Canada Labour Code, the Labour Standards Act in Saskatchewan and the Acts of both territories. Similarly, Québec allows the staggering of hours of work on a basis other than a weekly basis with the permission of the *Commission des normes du travail*. These provisions are especially useful to employers because it enables them to economize on overtime premiums.

Most jurisdictions also allow maximum hours of work to be exceeded where work is urgently required to maintain or repair the equipment or the plant or in the event of an

accident, emergency or any occurrence beyond human control which imperils the life, health or safety of individuals or which interrupts the provision of an essential service.

Alberta, British Columbia, Manitoba, Saskatchewan and the Yukon specifically allow hours to be varied for the purpose of establishing workweeks of less than five days. Compressed workweeks could also easily be established pursuant to the federal, New Brunswick, Newfoundland (for employees other than shop employees), Nova Scotia, Prince Edward Island and the Québec legislation. Because most of these acts do not stipulate a standard daily number of hours, authorization to establish compressed workweeks is not necessary as long as the maximum requirements are respected. Permission from the board or from the director is required in the four western provinces mentioned above, in Ontario, in both territories, as well as in Newfoundland for shop employees only.

Other Legislation Restricting Hours

Apart from general hours of work laws, other statutes regulate working hours in certain industries.

Schedules under industrial standards legislation in seven provinces, and decrees under the Québec Collective Agreement Decrees Act, the Construction Industry Labour Relations Act, and under the Manitoba Construction Industry Wages Act regulate hours in construction and other industries. Schedules and decrees apply to designated zones or industries; a number apply throughout the province.

New Brunswick and Ontario have legislation establishing maximum hours of work on certain work done in the performance of a contract with the provincial government.

Generally speaking, standard weekly hours for the construction industry range from 40 to 48, with a 40-hour week being the usual standard in the larger centres. In Québec, a 40-hour week is set for tradesmen, a 42½-hour week for labourers and a 50-hour week for road building and excavation work.

In the garment industry, regulated by schedules and decrees in Ontario and Québec, standard weekly hours are 36 or 37½. In most branches of this industry, standard hours have been reduced to 35.

In Manitoba, maximum hours which may be worked at regular rates are set under the Construction Industry Wages Act, which applies to both private and public construction work. At present an eight-hour day and a 40-hour week is in effect for most classifications of construction work in the Greater Winnipeg area, Brandon, Portage LaPrairie and Northern Manitoba, with a 44-hour week in the rest of the province. In the heavy construction industry, the maximum hours of work payable at regular rates are 52, except in Metropolitan Winnipeg during the period from November 1 to April 30, when a 48-hour week is in effect.

In all provinces except Manitoba, Ontario and Saskatchewan, there is also some indirect regulation of hours by virtue of provisions in minimum wage orders requiring the payment of an overtime rate after a specific number of working hours.

Coffee and Meal Breaks

Alberta, British Columbia, Ontario, the Northwest Territories and the Yukon provide that an employee is entitled to a meal break of at least one-half hour after each period of five consecutive hours of work. Manitoba awards to employees a meal break of one hour after five consecutive hours of work. However, the Manitoba Labour Board may authorize entitlement to a shorter period. In addition, parties to a collective agreement may agree to a shorter period. In Newfoundland, wholesale and retail workers are entitled to a meal break of one hour after each period of five consecutive hours of work. Other employees are entitled to only one-half hour. In Saskatchewan, only employees whose salary does not exceed 25 percent more than the minimum wage rate are entitled to a meal break. It consists of a period of one hour, except where the employer provides meals to his employees at a cost of no more than one-third the minimum wage rate. In such a case, the meal break is for a period of one-half hour.

Moreover, Ontario, Québec and Saskatchewan provide that, where employers allow them, time spent on coffee breaks is deemed to be time worked for the purposes of calculating an employee's salary.

Employment of Children

Legislation concerning the employment of children usually restricts the hours during which children may work and the maximum hours of work per day or week. For details, we refer the reader to the chapter entitled "Minimum Age for Employment" contained in this book.

3. GENERAL HOURS OF WORK AND OVERTIME RATES*

Federal – Canada Labour Code and Regulation

Hours of Work:	Standard: eight in a day 40 in a week
	Maximum: 48 in a week
	Exclusions: managers, superintendents and certain professional employees.
Overtime:	After eight in a day and 40 in a week – 1½ times the regular rate.
	Exclusions: same as above.
Averaging:	Upon notifying the Department of Labour, an employer may select an averaging period of 2 to 13 weeks. Averaging periods of longer than 13 weeks, and up to one year, can be approved by the Minister of Labour. An employer who has adopted an averaging plan is required to post clear information about the plan in conspicuous places in the establishment.

Alberta – Employment Standards Code and Regulation

Hours of Work:	Standard: eight in a day 44 in a week
	Maximum: The employee's hours must be confined within a period of 12 hours each day, except in an emergency.
	Exclusions: Managerial, confidential and supervisory employees, farm labour, domestic service, public employees, municipal policemen, certain sales persons, chartered accountants and lawyers.
Overtime:	After eight in a day and 44 in a week – 1½ times regular rate or time off in place of overtime pay if more than 44 in a week.
	Exceptions: Field catering, geophysical exploration, land surveying, logging and lumbering, employees of a municipal district employed in road construction or maintenance or snow removal, oil well servicing: 10 hours in a day or 191 hours in a month.
	Ambulance drivers, taxi cabs drivers: 10 hours in a day or 60 hours in a week.

*The jurisdictions frequently establish specific standards for specific industries, i.e., logging, mining, garment industry, etc. These standards are set in regulations, board orders, etc.

Alberta – (continued)	
	Employees of irrigation districts other than office employees: nine hours in a day or 54 hours in a week.
	Employees employed in the cultivation and preparation of trees, shrubs and plants: nine hours in a day or 48 hours in a week.
	Commercial truck and bus drivers: 10 hours in a day or 50 hours in a week.
	Highway and railway construction and brush clearing: 10 hours in a day or 44 hours in a week.
Variation of Hours of Work:	The Employment Standards Code permits compressed workweeks. An employer may require or permit an employee to work 10 hours in a day for a total of 80 hours (with minor variances) in a two-week period and not be required to pay overtime rates until those hours are exceeded.
Overtime Agreements:	Overtime agreements between the employer and his employees may be made, stipulating that compensatory time off may be given instead of overtime wages.
British Columbia – Employment Standards Act	
Hours of Work:	Standard: eight in a day 40 in a week
	Exclusions: In British Columbia, the list of exclusions from the entire act and from the hours of work provisions is extensive, covering nearly 30 categories of employees. For a complete list see the Employment Standards Act Regulation.
Overtime:	After eight in a day and 40 in a week – 1½ times regular rate; after 11 in a day and 48 in a week – two times regular rate.
Variation of Hours of Work:	The director may authorize a variation of the overtime wage provisions where: a) hours worked are averaged over a period of more than one week; b) less than five days are worked in a week; or c) the basis for calculation of overtime wages has been established by agreement between the employer and the employees or their representatives.

3. GENERAL HOURS OF WORK AND OVERTIME RATES (continued)

Manitoba – Employment Standards Act

Hours of Work:

Standard and maximum: eight in a day
40 in a week

Exclusions: Professional employees, farming, domestic servants employed in a private home who work no more than 24 hours in a week, fishing, voluntary employees for specific organizations, commissioned travelling salesmen, independent contractor, person employed in a private home as a sitter for a child or as a companion of an aged, infirm or ill member of the household, student in training, person employed under a rehabilitation or therapeutic project, certain provincial government employees, construction workers, employees employed in a business where only members of the employer's family are employed.

Overtime:

After eight in a day and 40 in a week – 1½ times the regular rate.

Exclusions: same as above.

Variation of Hours of Work:

It is possible to vary the working hours of employees to establish a compressed workweek, or to facilitate the arrangement or rotation of shifts with the authorization of the Manitoba Labour Board. The Board may also authorize any daily, weekly or monthly maximum number of hours for any class or group of employees.

New Brunswick - Minimum Wage Regulation

Overtime:

After 44 hours in a week - minimum set rate representing 1½ times the minimum wage.

Newfoundland – Labour Standards Act and Regulations

Hours of Work:

a) Assistants (shop employees)

Standard: eight in a day
40 in a week

Maximum: 16 hours in a day

b) Other employees

Standard: 44 in a week

Maximum: 16 hours in a day.

Exclusions: Professionals and students in professional training.

Newfoundland – (continued)	
Overtime:	Shop employees: After eight in a day and 40 in a week – minimum set rate representing 1½ times the minimum wage. Other employees: After 44 in a week – minimum set rate representing 1½ times minimum rate. Exclusions: Domestic servants, agricultural workers other than those employed in production of fruit and vegetables in greenhouses and nursery operations and persons employed in the raising of livestock.
Nova Scotia – Labour Standards Code and Regulations and General Minimum Wage Order	
Hours of Work:	Standard: 48 in a week Exclusions: Supervisory, managerial or employees employed in a confidential capacity, farm labourers, domestic servants, certain apprentices, professional employees or students of such professions, automobile, real estate and insurance salesmen, employees on fishing vessels, teachers, etc.*
Overtime:	After 48 in a week – minimum set rate representing 1½ times minimum rate. Exclusions: same as above, plus ambulance drivers or attendants, employees employed in a building where they reside as janitors, watchmen or superintendents, and service station employees if the station they work at is required to remain open more than 48 hours in a week. Exception: An employee in the transport industry who is required to be away from his home base overnight is paid overtime after 96 hours in any two consecutive weeks.
Variation of Hours of Work:	Where by law, custom or agreement, the hours of work on one or more days of the week are less than the period determined by the Minimum Wage Board, the period so determined may be exceeded on the remaining days of the week, by agreement between the employer and the employees or their representatives.

*In Nova Scotia, a number of other categories of workers are excluded from hours of work and overtime provisions for a complete list, please refer to the Code and Regulations.

Ontario – Employment Standards Act and Regulation

Hours of Work:	Standard: 44 in a week Maximum: eight in a day 48 in a week Exclusions: Supervisory and managerial employees, domestic servants, construction workers, resident janitors or caretakers, full-time firefighters, fishing or hunting guides, persons engaged in landscape gardening, mushroom growing, horticulture, and certain other agricultural activities, certain categories of professionals, teachers, funeral directors and embalmers, homeworkers, etc.*
Overtime:	After 44 in a week – 1½ times regular rate. Exclusions: Mostly the same as above.* Exceptions: Road building: streets, highways and parking lots -- 55 hours before overtime rates applies. Road building: Bridges, tunnels and retaining walls: 50 hours before overtime rate applies. Local cartage: 50 hours before overtime rate applies. Highway transport: 60 hours before overtime rate applies. Hotel, motel, tourist resort, restaurant and tavern employees who work 24 weeks or less in a calendar year and who are provided with room and board: 50 hours before overtime rate applies. Fresh fruits and vegetable processing: 50 hours before overtime rate applies. Sewer and watermain construction: 50 hours before overtime rate applies.
Variation of Hours of Work:	The director may approve a variation of the working day for the purpose of establishing a compressed workweek.

* In Ontario, the list of exclusions from the act or from hours of work and overtime pay provisions is extensive. For a complete list, please refer to the Act and Regulations.

3. GENERAL HOURS OF WORK AND OVERTIME RATES (continued)

Prince Edward Island – Minimum Wage Order 1/85

Hours of Work:

Standard: 48 in a week

Exclusions: Registered apprentices, farm labourers who are not engaged in a commercial undertaking, persons employed for the sole purpose of protecting and caring for children in private homes, employees of non-profit organizations who are required to reside at a facility operated by their employer.

Overtime:

After 48 in a week – set minimum rate representing 1½ times minimum wage.

Exclusions: same as above, plus ambulance drivers except in respect of the first 12 hours of overtime per week.

Québec – An Act Respecting Labour Standards and Regulation

Hours of Work:

Standard: 44 in a week

Exclusions: The consort of the employer and their ascendants and descendants; a student employed in a social or community non-profit organization; an executive officer of an undertaking; an employee who works outside an establishment whose working-hours cannot be controlled; an employee assigned to harvesting, canning, packaging and freezing fruit and vegetables during the harvesting period; an employee of a fishing, fish processing or fish canning industry; a farm worker; an employee whose main duty is the care, in a dwelling, of a child, of a disabled, handicapped or aged person if that work does not serve to procure a profit to the employer; construction workers; certain contract workers; a student who works during the school year in an establishment selected by an educational institution pursuant to a job induction program approved by the Ministère de l'Education.

Exceptions: Domestic living in the employers' home: 53 hours in a week.

Employees working in a remote area or on the James Bay territory: 55 hours.

Employees working in a forestry operation or sawmill: 47 hours.

A watchman other than one employed by a commercial surveillance service: 60 hours.

3. GENERAL HOURS OF WORK AND OVERTIME RATES (continued)

Québec – (continued)

Overtime: Work performed in excess of standard hours: 1½ times regular rate (i.e., premium of 50% over the regular rate).

Staggering of Hours of Work: An employer may, with the authorization of the Commission, stagger the working-hours in such a manner that the average working-hours are equivalent to the norm prescribed. The Commission's authorization is not required where staggering is provided by a collective agreement or a decree.

Saskatchewan – Labour Standards Act and Regulation

Hours of Work:

Standard: eight in a day
40 in a week

Maximum: 44 in a week

Exclusions: employees in certain northern areas of province, managerial employees, farm workers, certain professional employees and students, commercial travellers, logging, road construction, automobile salesmen and civil servants employed as field employees, certain driver-salesmen in wholesale businesses, teachers, handicapped employed in a sheltered workshop or a work activity centre, and domestic workers.

Overtime: After eight in a day and 40 in a week – 1½ times the regular rate.

Exclusions: same as above.

Exceptions: Certain employees of city newspapers – 80 hours in two weeks; oil truck drivers - hours averaged over one year.

Note: Special provisions are set for a four day week

10 in a day
40 in a week

after which 1½ times the regular rate is paid.

3. GENERAL HOURS OF WORK AND OVERTIME RATES* (continued)

Saskatchewan – (continued)

Averaging of Hours of Work:	The director may authorize the averaging of hours of work over any period, in any occupational classification. The average number of hours worked by any employee must not exceed eight in a day or 40 in a week during the averaging period. No authorization is necessary where the employer obtains the written consent of the trade union representing the employees and such consent is limited to providing that the average number of hours are not to be exceeded unless overtime wages are paid.
Variation of Hours of Work:	The director may authorize a variation of the standard hours of work to permit the establishment of a compressed workweek. No authorization is necessary if the employer obtains the written consent of the trade union representing the employees and such consent is limited to a compressed workweek of no more than 10 hours in any day or 40 hours in any week, unless overtime wages are paid.

Northwest Territories – Employment Standards Act

Hours of Work:	Standard: eight in a day 40 in a week Maximum: 10 in a day 60 in a week Exclusions: Trappers and persons engaged in commercial fisheries, members or students of certain professions, managerial employees.
Overtime:	After eight in a day or 40 in a week – 1½ times regular rate. Exclusions: same as above.
Averaging of Hours of Work:	Where the nature of the work in an establishment necessitates irregular distribution of hours of work, the labour standards officer may authorize, in writing, the standard and maximum hours to be calculated as an average for a period of one or more weeks.

3. GENERAL HOURS OF WORK AND OVERTIME RATES (continued)

Yukon Territory – Employment Standards Act and Regulation

Hours of Work:	Standard: eight in a day 40 in a week
	Exclusions: Employees who are members of the employer's family, mineral exploration, travelling salesmen, supervisory and managerial employees, members or students of certain professions, a guide or outfitter, a watchman or caretaker, farm workers, sitters, domestic servants and persons receiving a supplement to benefits under section 38.1 of the Unemployment Insurance Act, 1971.
Overtime:	After eight hours in a day or 40 in a week – 1½ times regular rate.
	Exclusions: same as above.
	Exception: Persons employed in mines are not to work in excess of the standard hours.
Averaging of Hours of Work:	Where the employer and the trade union representing the employees (or a majority of non-unionized employees) agree in writing, the director may order that the weekly standard hours of work of those employees be averaged over a period of two or more weeks, as prescribed in the order.
Variation of Hours of Work:	Where the employer and the trade union, or a majority of employees where there is no trade union, agree in writing, the employees may work a compressed workweek of 10 hours in any day over a period of four days in a week, or 12 hours in any day over three days in a week, without requiring overtime wages to be paid.

MINIMUM WAGES

The minimum wage is a basic labour standard which requires adjustment from time to time to maintain its relevance in changing economic and social conditions. A brief history of the evolution of the minimum wage legislation best demonstrates how governments have maintained its relevance.

HISTORICAL BACKGROUND

On the international scene, minimum wage legislation first appeared in New Zealand in 1894 and was first attempted on this continent by Massachussets in 1912. In Canada, the first attempts at regulating the field of minimum wages resulted in the payment of "fair wages" to persons engaged on all public works and government contracts. Soon after the turn of the century, legislators in this country began enacting "policies" with regard to exceptionally low wages as well as excessively long hours of work and unhealthy working conditions.

> "The year 1900 saw the beginning of the Fair Wages Policy. In March of that year a resolution was passed by the House of Commons which was directed against abuses arising from the subletting of Government Contracts (...). It declared it to be the policy of the Government that wages generally accepted as current in each trade for competent workmen in the district where the work is carried out should be paid on all public works undertaken by the Government itself or aided by Government funds. (...) The Federal Government's actions in 1900 helped to gain wide acceptance of the fair wage principle."[11]

By 1920, six provinces - Manitoba, British Columbia, Québec, Saskatchewan, Nova Scotia and Ontario - had enacted legislation destined to protect the two most vulnerable and exploited groups of the time: women and children labourers.

> "Beginning about 1909 in Canada and continuing for a decade, a demand for a legal minimum wage for women and young workers culminated in the enactment of minimum wage legislation applicable to women in some types of employment. Six Canadian provinces had such laws by 1920."[12]

The general pattern of these Acts was basically the same - a board made up of employer and employee representatives, and sometimes of the public, with an impartial chairman, was authorized to hold investigations and to issue orders as to minimum wages for female employees. In Ontario and Québec the law at first referred to wages only. In the other provinces the Board had the power to regulate hours and conditions of labour as well.

Male Minimum Wage Orders began appearing only in the late 1930s (the first in British Columbia in 1925) and became widespread in the mid-50s. Through to the late 60s, and even as recently as 1974, there were differences in the minimum wage rates payable to men and women, but this concept slowly gave way to the principle of equal pay.

Until the early 70s many provinces also had zones or geographical differentials whereby workers in urban centers were paid a higher wage than those in rural areas. At the beginning of 1960, for example, of the nine provinces that had minimum wage legislation, six had such zones. The reason for having such a differential was that the cost-of-living had generally been higher in the cities than in rural areas.

Throughout the history of minimum wage legislation there have also been various other differentials. The youth differentials still exist in Alberta, British Columbia, Nova Scotia, Ontario and Prince Edward Island. Occupational differentials have been and still are rather common. For example, domestic and farm workers have generally been excluded from minimum wage provisions, and where they were not, they were entitled to a lower minimum. In addition, occupations like restaurant workers, hairdressers, salespersons, and construction workers have also historically been treated separately. In the past, provision was made in the legislation of

almost all jurisdictions for the employment of handicapped workers at rates below the established minimum, usually under a system of individual permits; many such provisions have been abolished since the adoption of the Charter of Rights and Freedoms.

THE PRESENT SITUATION

The role of the minimum wage boards or other labour boards which review the minimum wage rates is basically the same today as it has always been: they are authorized by law to recommend, after the necessary inquiries, investigation and research, minimum rates of wages or to establish such rates with the approval of the Lieutenant-Governor in Council. The rates are reviewed and increased from time to time by minimum wage orders or, in Alberta, British Columbia, Newfoundland, Nova Scotia, Québec, Ontario and Manitoba, by regulation under the Provincial Employment Standards Act. In the federal jurisdiction, where there is no board of this kind, the rate for employees 17 years of age and over is set by order of the Governor in Council, whereas the one for under 17 is fixed by regulation. In Alberta, British Columbia, Newfoundland and Ontario, none of which have boards, the task of establishing the minimum wage rates is incumbent upon the Lieutenant-Governor in Council.

The boards are usually composed of members who represent the interests of employers and employees and in some cases the general public, with an impartial chairman, frequently an officer of the department of labour.

Except in Manitoba, the acts do not specify how the minimum wage is to be determined. In that province, the board is directed to take into consideration and be guided by "the cost to an employee of purchasing the necessities of life and health."

The general practice is to fix a basic wage, taking into account the cost-of-living, economic conditions and other relevant factors. The minimum wage rate is set mainly for the protection of unorganized and unskilled workers. It constitutes a floor above which employees or their trade unions may negotiate with management for a higher standard. The boards hold public hearings and make extensive inquiries before minimum wage orders are put into effect. Minimum wage orders are not reviewed with any regularity.

> "Typically, the minimum wage legislation provides, as does s.23 of the Ontario Employment Standards Act, 1974, that every employer who permits any employee to work for him "shall be deemed to have agreed to pay to the employee at least the minimum wage established under this Act." Thus, not only is it an offence to fail to pay the minimum wage prescribed under statutory authority, it is also a breach of the employer's contract, which makes him liable to civil action and to any special statutory procedures for the recovery of unpaid wages. In any case where an unpaid employee is able to prove that he provided services and to prove the hours he worked he should be able to recover minimum wages, even if he cannot prove any of the other essentials of the contract."[13]

Special Categories of Workers

In all provinces general orders are issued setting hourly rates that apply to most workers throughout the province. In five provinces, these general orders are supplemented by special orders for particular industries, occupations or classes of workers, and in some cases taking into account special skills.

For example, Québec now has an industry order governing the retail food trade. Formerly there were eight such special orders. Nova Scotia has established rates for employees in beauty parlors and province-wide rates for logging and forest operations, and for road building and heavy construction, but these rates are now the same as those set out in the general regulation. Manitoba has established special rates for construction. A weekly rate has been set in Alberta for salespersons. Special rates contained within the general regulations in Ontario apply to employees who serve liquor in licenced establishments and to hunting and fishing guides.

In the Northwest Territories, the Labour Standards Act requires the payment of a minimum rate of wages to all employees,

with the exception of those employed as domestic servants, trappers, persons engaged in commercial fisheries, members of certain professions and managers. Where employees are paid on a basis other than time, or on a combined basis of time and some other basis, they are entitled to receive the equivalent of the minimum wage.

In the federal jurisdiction the Minister of Labour is authorized to exempt employers of trainees from the minimum wage requirements, provided that the trainees are paid at a rate not less than that which the Minister may order. Such an exemption, however, has seldom been granted.

In Nova Scotia, inexperienced workers may be employed during a period of three months at the same rate paid to employees under 18 years of age.

Alberta, Manitoba, Newfoundland, Saskatchewan and the Northwest Territories still allow the employment of handicapped workers at rates below the established minimum, usually under a system of individual permits. In British Columbia, disabled employees of a charity who are receiving therapy or engaged in a therapeutic work program are excluded from entitlement to the minimum wage.

In British Columbia, Nova Scotia and Prince Edward Island, the orders set special minimum rates for young workers. A student rate is set in Ontario and in Alberta.

Special rates for domestic workers are set in British Columbia, Newfoundland, and Québec. In Manitoba (if they work more than 24 hours per week), New Brunswick, Ontario (if they work more than 24 hours per week), Prince Edward Island and the Yukon domestic workers receive the general minimum wage. In Saskatchewan, a domestic whose employer is in receipt of a publicly-funded wage subsidy must be paid the minimum wage for all hours worked up to eight hours a day. All other jurisdictions exclude domestic workers from the application of the minimum wage provisions.

Farm labour is also excluded in most provinces as well as the Yukon Territory. In British Columbia a farm or horticultural worker who is paid wages other than on an hourly or piecework basis is to be paid a certain sum for each day or part of a day worked. Farm workers employed on a piece work basis to hand-harvest fruit, vegetable or berry crops are covered by a special regulation. In Québec, farm labourers, with the exception of those working for fruit or horticultural enterprises and those principally involved with non-mechanized operations, are covered. The New Brunswick legislation is similar in that farm workers of a family farm are excluded, but those working on a farm where four or more full-time employees are employed for a substantial part of the year are entitled to minimum wages, as well as a few other benefits. Farm workers in the Northwest Territories are not excluded from the Labour Standards Act, and are thus entitled to the minimum wage.

A few other classes of workers are excluded in most jurisdictions. Typical exclusions are supervisory and managerial employees, certain categories of employed students, registered apprentices, certain categories of salespersons, and members and students of designated professions.

Minimum wage legislation usually contains related provisions intended to protect the worker, such as provisions concerning gratuities, call-in pay and deductions.

Minimum wage orders apply to both men and women.

4. MINIMUM WAGE RATES FOR EXPERIENCED ADULT WORKERS

Jurisdiction	Rate	Effective Date
Federal	$4.00	May 26, 1986
Alberta	$4.50	September 1, 1988
British Columbia	$5.00	April 1, 1990
Manitoba	$4.70 $5.00	September 1, 1987 March 1, 1991
New Brunswick	$4.50 $5.00	October 1, 1989 October 1, 1991
Newfoundland[1]	$4.25	April 1, 1988
Nova Scotia	$4.50	January 1, 1989
Ontario	$5.40	October 1, 1990
Prince Edward Island	$4.50 $4.75	April 1, 1989 April 1, 1991
Québec	$5.30	October 1, 1990
Saskatchewan	$5.00	July 1, 1990
Northwest Territories	$5.00	April 1, 1986
Yukon Territory	$5.97	April 1, 1990

[1]Sixteen years of age and over.

5. MINIMUM WAGE RATES FOR YOUNG WORKERS AND STUDENTS*

Jurisdiction	Rate	Effective Date
Federal	Employees under 17: $4.00	May 26, 1986
Alberta	Employees under 18 attenting school: $4.00	September 1, 1988
British Columbia	Employees 17 and under: $4.50	April 1, 1990
Manitoba	Employees under 18: $4.70 $5.00	April 1, 1988 March 1, 1991
Nova Scotia	Underage employees 14 to 18: $4.05	January 1, 1989
Ontario	Students under 18 employed for not more than 28 hours in a week or during a school holiday: $4.55	October 1, 1990
Prince Edward Island	Employees under 18: $4.00 $4.35	April 1, 1989 April 1, 1991

*In the federal jurisdiction, Manitoba, New Brunswick, Newfoundland, Québec, Saskatchewan, the Northwest Territories and the Yukon Territory the young workers and students rate is the same as the experienced adult rate.

6. MINIMUM RATES AND LEARNING PERIODS FOR INEXPERIENCED WORKERS*

Jurisdiction	Rate and Learning Periods	Effective Date
Nova Scotia	During first three months of employment: $4.05	January 1, 1989

* Only Nova Scotia makes provision for a lower rate to be paid to learners. In addition, Nova Scotia has a learner's rate for employees of beauty parlours. Inexperienced employees of beauty parlours are entitled to $3.35 per hour during their first three months of employment, to $3.70 per hour during the second three months and to $4.05 during the third three months.

7. MINIMUM WAGE RATES FOR OTHER CATEGORIES OF EMPLOYEES*

Jurisdiction	Rates and Categories	Effective Date
Alberta	Various categories of salespersons: $180 per week	September 1, 1988
British Columbia	Live-in homemakers, domestics, farm workers or horticultural workers paid wages other than on an hourly or on piecework basis: $40.00 per day or part of a day worked	April 1, 1990
	Resident caretakers in apartment buildings of eight to 60 units: $300 per month plus $12.00 per unit	April 1, 1990
	Buildings of more than 60 units: $1 020 per month	April 1, 1990
	Farm workers employed on a piece-work basis to hand harvest certain fruit, vegetable or berry crops: paid according to gross weight or volume picked (See the Employment Standards Act Regulation)	April 1, 1990
New Brunswick	Employees whose hours of work are not verifiable and who are not remunerated strictly by commission: $209 per week $220 per week	October 1, 1990 October 1, 1991
	Counsellors and program staff at a residential summer camp: $198 per week	October 1, 1989
Newfoundland	Domestics employed in a private home (16 and over): $3.00 per hour	December 1, 1988

*Some provinces establish a "fair wage" or minimum wage rates for various trades in the construction industry which are not reproduced here. Some provinces also make provision for handicapped persons to be paid special (lower) rates established by order or by a system of individual permits.

7. MINIMUM WAGE RATES FOR OTHER CATEGORIES OF EMPLOYEES (continued)

Jurisdiction	Rates and Categories	Effective Date
Ontario	Employees serving alcoholic beverages in licensed establishments: $4.90 per hour	October 1, 1990
	Domestic employees** (cooks, housekeepers, nannies) who work more than 24 hours a week: $5.40 per hour	October 1, 1990
	Fruit, vegetable and tobacco harvesters : $5.40 per hour	January 1, 1991
Québec	Employees who usually receive gratuities: $4.58 per hour	October 1, 1990
	Domestic workers residing at the employer's residence: $202 per week	October 1, 1990

** Does not apply to babysitters or companions.

8. MAXIMUM DEDUCTIONS PERMITTED FOR BOARD AND LODGING*

Jurisdiction	Meals		Lodging		Board and Lodging
	single	per week	per day	per week	per week
Federal	50¢		60¢		
Alberta	$1.50		$2.00		
Manitoba	50¢ $1.00 (March 31/91)			$5.00 $7.00 (March 31/91)	
Newfoundland	$1.20	$19.00		$9.00	$29.00
Nova Scotia[1]	$2.15	$33.40		$9.35	$41.35
Ontario[2]	$2.00	$42.00		$25.00	$67.00
Prince Edward Island	$3.00	$36.00		$20.00	$45.00
Québec	$1.25	$16.45		$16.45	$32.90
Northwest Territories	65¢		80¢		
Yukon[3]		$5.00		$5.00	

*British Columbia and Saskatchewan make no general provision for deductions for board and lodging. However, in Saskatchewan, a meal may not cost more than ¼ of the minimum hourly wage, except where the hourly wage of the employee is more than 25% above the minimum hourly wage. Generally, no amount can be deducted from the minimum wage for board or lodging which was not provided.

[1]Nova Scotia – – Logging and forest operations: board and lodging, $6.60 per day; construction, no charges set; beauty parlour employees same as table.

[2]Ontario – – Rates above are for private lodging. Lodging where the room is not private: $12.50 per week. Board and lodging, where the room is not private: $54.50 per week. Domestics and nannies: same as table. Fruit, vegetable and tobacco harvesters: serviced housing accommodations, $78.30 per week; housing accommodations, $57.80 per week.

[3]Yukon – – An employee who receives the minimum wage may not be charged more than $5.00 per day for either board or lodging or for both.

9. GENERAL MINIMUM WAGE RATES FOR EXPERIENCED ADULT WORKERS SINCE 1965

Jurisdiction	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974
Federal	$1.25					July 1 $1.65	July 1 $1.75	Nov. 1 $1.90		April 1 $2.20
Alberta	$1.00		Aug. 1 $1.15	Jan. 1 $1.25		April 1 $1.40 Oct. 1 $1.55			Jan. 1 $1.75 Oct. 1 $1.90	April 1 $2.00
British Columbia	$1.00		May 1 $1.10 Nov. 1 $1.25			May 4 $1.50		Dec. 4 $2.00	Dec. 3 $2.25	June 3 $2.50
Manitoba	Dec. 1 $0.85 (urban) $0.80 (rural)	July 1 $0.92 (urban) $0.90 (rural) Dec. 1 $1.00	Dec. 1 $1.10	April 1 $1.15 Aug. 1 $1.20 Dec. 1 $1.25	Dec. 1 $1.35	Oct. 1 $1.50	Nov. 1 $1.65	Oct. 1 $1.75	Oct. 1 $1.90	July 1 $2.15
New Brunswick	Average $0.80			Jan. 1 $1.00		Jan. 1 $1.15	Sept. 1 $1.25	March 1 $1.40	Jan. 1 $1.50	Jan. 1 $1.75 July 1 $1.90
Newfoundland	M $0.70 F $0.50			May 1 M $1.10 F $0.85		July 1 M $1.25 F $1.00		June 1 $1.40		Jan. 1 $1.80 July 1 $2.00

F - Female
M - Male

9. GENERAL MINIMUM WAGE RATES FOR EXPERIENCED ADULT WORKERS SINCE 1965 (continued)

Jurisdiction	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974
Nova Scotia	M $1.05 F $0.80	June 1 M $1.10 F $0.85		April 1 M $1.15 F $0.90	Aug. 1 M $1.25 F $1.00		Jan. 1 M $1.30 F $1.10 July 1 M $1.35 F $1.20	July 1 $1.55	July 1 $1.65	July 1 $1.80 Oct. 1 $2.00
Ontario	$1.00				Jan. 1 $1.30	Oct. 1 $1.50	April 1 $1.65		Feb. 1 $1.80	Jan. 1 $2.00 Oct. 1 $2.25
Prince Edward Island	M $1.00	April 16 M $1.10		July 1 F $0.80	Jan. 1 F $0.85 July 1 F $0.95 Sept. 1 M $1.25			July 1 F $1.10	July 1 M $1.40 F $1.30	Jan. 1 $1.65 July 1 $1.75
Quebec	$0.85	Nov. 1 $1.00	April 1 $1.05	Nov. 1 $1.25		May 1 $1.35 Nov. 1 $1.40	May 1 $1.45 Nov. 1 $1.50	Aug. 1 $1.60 Nov. 1 $1.65	May 1 $1.70 Nov. 1 $1.85	May 1 $2.10 Nov. 1 $2.30
Saskatchewan	$38 per week	July 22 $40 per week		Oct. 1 $1.05	Oct. 1 $1.25		June 1 $1.50	Jan. 2 $1.70 July 1 $1.75	Dec. 1 $2.00	July 2 $2.25
Northwest Territories				July 1 $1.25		Sept. 1 $1.50			Sept. 1 $2.00	April 1 $2.50
Yukon Territory				July 1 $1.25		May 1 $1.50		Jan. 1 $1.75	June 1 $2.00*	April 1 $2.30*

F - Female
M - Male

* Federal rate plus ten cents.

9. GENERAL MINIMUM WAGE RATES FOR EXPERIENCED ADULT WORKERS SINCE 1965 (continued)

Jurisdiction	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984
Federal	July 23 $2.60	April 1 $2.90				Dec. 1 $3.25	May 1 $3.50			
Alberta	Jan. 1 $2.25 July 1 $2.50	March 1 $2.75	March 1 $3.00			May 1 $3.50	May 1 $3.80			
British Columbia	Dec. 1 $2.75	Jan. 1 $3.00				July 1 $3.40 Dec. 1 $3.65				
Manitoba	Jan. 1 $2.30 Oct. 1 $2.60	Sept. 1 $2.95			July 1 $3.05	Jan. 1 $3.15	March 1 $3.35 Sept. 1 $3.55	July 1 $4.00		
New Brunswick	Jan. 1 $2.15 July 1 $2.30	June 1 $2.55 Nov. 1 $2.80				July 1 $3.05 Oct. 1 $3.35		Oct. 1 $3.80		
Newfoundland	Jan. 1 $2.20	Jan. 1 $2.50			June 1 $2.80	July 1 $3.15	March 31 $3.45		Jan. 1 $3.75	

9. GENERAL MINIMUM WAGE RATES FOR EXPERIENCED ADULT WORKERS SINCE 1965 (continued)

Jurisdiction	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984
Nova Scotia	Jan. 1 $2.20 March 1 $2.25	Jan. 1 $2.50	Jan. 1 $2.75			Oct. 1 $3.00	Oct. 1 $3.30	Oct. 1 $3.75		
Ontario	May 1 $2.40	March 15 $2.65		Aug. 1 $2.85	Jan. 1 $3.00		March 31 $3.30 Oct. 1 $3.50			March 1 $3.85 Oct. 1 $4.00
Prince Edward Island	Jan. 1 $2.05 Oct. 1 $2.30	July 1 $2.50	July 1 $2.70	Nov. 26 $2.75		July 1 $3.00	July 1 $3.30	Oct. 1 $3.75		
Québec	June 1 $2.60 Dec. 1 $2.80	July 1 $2.87	Jan. 1 $3.00 July 1 $3.15	Jan. 1 $3.27 Oct. 1 $3.37	April 1 $3.47	April 1 $3.65	April 1 $3.85 Oct. 1 $4.00			
Saskatchewan	March 31 $2.50	Jan. 1 $2.80	Jan. 1 $3.00	Jan. 31 $3.15 June 30 $3.25	Oct. 1 $3.50	May 1 $3.65	Jan. 1 $3.85 July 1 $4.00	Jan. 1 $4.25		
Northwest Territories		June 1 $3.00				May 15 $3.50		Aug. 1 $4.25		
Yukon Territory	July 23 $2.70*	April 1 $3.00*				Dec. 1 $3.35*	May 1 $3.60*			

* Federal rate plus ten cents.

9. GENERAL MINIMUM WAGE RATES FOR EXPERIENCED ADULT WORKERS SINCE 1965 (continued)

Jurisdiction	1985	1986	1987	1988	1989	1990	1991
Federal		May 26 $4.00					
Alberta				Sept. 1 $4.50			
British Columbia				July 1 $4.50	Oct. 1 $4.75	April 1 $5.00	
Manitoba	Jan. 1 $4.30		April 1 $4.50 Sept. 1 $4.70				March 1 $5.00
New Brunswick		Sept. 15 $4.00			April 1 $4.25 Oct. 1 $4.50	Oct. 1 $4.75	Oct. 1 $5.00
Newfoundland	Jan. 1 $4.00			April 1 $4.25			

9. GENERAL MINIMUM WAGE RATES FOR EXPERIENCED ADULT WORKERS SINCE 1965 (continued)

Jurisdiction	1985	1986	1987	1988	1989	1990	1991
Nova Scotia	Jan. 1 $4.00				Jan. 1 $4.50		
Ontario		Oct. 1 $4.35	Oct. 1 $4.55	Oct. 1 $4.75	Oct. 1 $5.00	Oct. 1 $5.40	
Prince Edward Island	Oct. 1 $4.00			Oct.1 $4.25	April 1 $4.50		April 1 $4.75
Quebec		Oct. 1 $4.35	Oct. 1 $4.55	Oct. 1 $4.75	Oct. 1 $5.00	Oct. 1 $5.30	
Saskatchewan	Aug. 1 $4.50					Jan. 1 $4.75 July 1 $5.00	
Northwest Territories		April 1 $5.00					
Yukon Territory	Jan. 1 $4.25		May 1 $4.75	May 1 $5.39		April 1 $5.97	

EQUAL PAY

HISTORICAL BACKGROUND

Equal pay for work of equal value is not a new idea. It has been discussed internationally by the International Labour Organization (ILO) and the United Nations (UN) for many decades.

> "The idea that women should receive pay equal to that received by men when the work done by both is equal in value has been inextricably linked with the International Labour Organization since its founding in 1919. The document destined to become that organization's Constitution was originally contained in the Versailles Peace Treaty. Part XIII of the Treaty dealt with the organization of labour, and listed nine principles as being especially important in regulating labour conditions. The seventh was "The principle that men and women should receive equal remuneration for work of equal value."[14]

The ILO's Equal Remuneration Convention (100) and its accompanying Recommendation 90 were adopted in 1951. Canada ratified Convention 100 in 1972. Other ILO Conventions and Recommendations also address this issue, as well as a number of UN international instruments, such as the UN Convention on the Elimination of All Forms of Discrimination Against Women.

Equal pay for work of equal value legislation is broader in scope and application than that respecting equal pay for equal work, and provides a means of addressing part of the persistent wage gap between women and men. Studies have shown that in the late 1980's, women continued to be paid about two-thirds of men's wages. Considerable empirical research indicates that the existing wage-gap can be attributed to essentially two factors: a segregated labour force and the historical undervaluation of women's work.[15]

Women are concentrated in lower-level and lower-paying jobs, mainly in sales, service, clerical and health-related fields. While there has been some increase in female participation in fields such as administration, natural sciences, engineering, mathematics, and the social sciences, women have been slow to enter the traditionally male-dominated fields, both in formal education and in government-sponsored training programs. Furthermore, the majority of occupations and industries in which women are concentrated are not unionized. This is especially true of the sales and service sectors, banking, and, with the exception of the public service, clerical and office work. Generally speaking, wages, provision of benefits, and annual increases in non-unionized sectors are lower than those in unionized sectors.

The wage-gap also results, in part, from what has been called the systematic discrimination caused by the historical undervaluation of work done by women. This work was undervalued in part because it was seen as 'women's work', an extension of their family and household responsibilities, and therefore not requiring any special or additional skills. As well, it was assumed that working women did not need a living wage because the main family breadwinner was the husband and father. Despite changes in labour force participation, marital and family status, training, and education, the effects of the historical undervaluation of work done by women are evident today in a persistent wage gap between women and men.

Experts evaluate that, in Canada, about 15 percent of the wage-gap could be corrected through equal-value laws and a good part of the remainder, only through employment equity programs that combat job segregation and encourage women to consider employment in male-dominated occupations. However, in order to completely close the gap, other policies and programs may be needed to address other factors which may contribute to it. For example, experience, job tenure, education, and interrupted or irregular work patterns due to child bearing and other family responsibilities unequally distributed between women and men may account for several percentage points in the wage-gap.

THE PRESENT SITUATION

It is necessary at the outset to distinguish between the concepts of equal pay for equal work, equal pay for work of equal value and pay equity.

The first concept establishes a set of rules that combat the more overt form of discrimination in the payment of wages on the basis of sex. Equal pay for equal work involves comparing jobs occupied by opposite sexes where they are the same or substatially the same and establishing their equal worth.

Equal pay for work of equal value legislation provides a means of eliminating the wage gap by allowing comparison of male and female jobs of a quite different nature to determine whether they have the same intrinsic value. Jobs such as nurse and parking lot attendant can be compared using specific job evaluation techniques which measure a composite of factors related to the skill, effort, responsibility and working conditions required to perform the duties. This provides substantially more scope than equal pay for equal work legislation, which can only apply when men and women are doing work where each one of these factors is the same, or very similar in nature. However, both of these concepts are embedded in legislation that is "reactive", in the sense that they rely on complaints being lodged before the provisions can be applied.

The third concept, which also provides a means to compare very different jobs by using elaborate job evaluation techniques, contains certain differences in scope and in models of implementation that permits to distinguish it from the others. Pay equity legislation is pro-active, rather than being triggered by complaints, provides very specific targets and deadlines, and uses the collective bargaining process to get the parties involved to agree to the choice or the development of a job evaluation system and to the exact allocation of pay adjustments to be made. Pay equity was introduced in Canada in 1985 by Manitoba and is very similar to the "comparable worth" principle established in parts of the United States.

Most jurisdictions have enacted some form of equal pay legislation, normally equal pay for equal work. However, laws of Québec, the Yukon Territory and the Parliament of Canada provide for equal pay for work of equal value, and those of Manitoba, New Brunswick, Nova Scotia, Ontario and Prince Edward Island provide for pay equity. In addition, Newfoundland has adopted an administrative policy (without enacting legislation) which provides for pay equity in its public sector.

Equal Pay for Equal Work

The equal pay for equal work legislation typically prohibits an employer from differentiating in the wages paid to female and male employees performing the same or similar work under the same or similar conditions, and whose jobs require similar skill, effort or responsibility. In most of the provinces, it is specified that similar work has to be done in the same establishment. Differences in rates of pay based on a seniority system, a merit system, a system that measures earnings in relation to quantity or quality of production, or a performance rating system generally do not constitute discrimination within the terms of equal pay laws. Some legislation simply states that a difference in pay based on any factor other than sex may be justified.

In most jurisdictions, an employer cannot reduce the wages of a male or female employee in order to comply with the equal pay provisions. A number of laws provide that a person claiming to be aggrieved by an alleged contravention of the act has a choice of initiating court action or lodging a complaint with the appropriate administrative tribunal or the Human Rights Commission.

Each Act makes it an offence for an employer to discriminate against an employee because he or she has made a complaint or given evidence under the Act.

Provision is made in all the Acts for criminal prosecution as a last resort. Failure to comply with an act or an order is an offence punishable by a fine.

Equal Pay for Work of Equal Value

Pursuant to the equal pay for work of equal value legislation, it is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment and performing work of equal value. The criterion applied in assessing the value of work is a composite of the skill, effort and responsibility required in the performance of the work,

and the conditions under which the work is performed. Guidelines suggest the use of modern job evaluation practices in applying the criterion prescribed under the Act to each job function.

To determine if such employees are performing work of equal value, the skill required in the performance of the work is considered to include any type of intellectual or physical skill required in the performance of that work which has been acquired by the employees through experience, training, education or natural ability; the nature and extent of such skills are normally compared without taking into consideration the means by which they were acquired by the employees.

The effort required in the performance of work is considered to include any intellectual or physical effort normally required in the performance of that work. Such efforts may be found to be of equal value whether they were exerted by the same or different means, and the assessment of the effort is not affected by the occasional or sporadic performance by that employee of a task that requires additional effort.

The responsibility required in the performance of the work of an employee is assessed by determining the extent to which the employer relies on the employee to perform the work, having regard to the importance of the duties of the employee and the accountability of the employee to the employer for machines, finances and other resources, and for the work of other employees.

Conditions under which the work of an employee is performed include noise, heat, cold, isolation, physical danger, conditions hazardous to health, mental stress, and any other conditions produced by the physical or psychological work environment, but do not include a requirement to work overtime or on shifts where a premium is paid for such overtime or shift work.

The Canadian Human Rights Act, which contains the federal equal value provisions, applies to all federal works and undertakings, companies that fall under federal jurisdiction and the federal public service. Similarly, the Québec Charter of Human Rights and Freedoms applies to all employers, including those of the private, public and parapublic sectors. The Yukon Territory Human Rights Act contains a provision for equal pay for work of equal value which applies to the public sector only, or, more precisely, to the territorial government as well as to municipalities and their boards, corporations and commissions.

Pay Equity

The stated objective of pay equity legislation typically is to redress systemic gender discrimination in compensation for work performed by employees in female-dominated job classes, usually in the public and para-public sectors. However, Ontario's Pay Equity Act applies to both the public and private sectors. Manitoba's Act has limited application in the private sector.

For the purposes of these laws, it is a discriminatory practice for an employer to establish and maintain differences in wages between employees in male-dominated classes and those in female-dominated classes who are performing work of equal or comparable value. In determining if a class is female-dominated or male-dominated, regard is sometimes given to the historical incumbency of the class, gender stereotypes of fields of work (and such other criteria as may be prescribed by regulation), and not just to the fact that 60 percent or more of the incumbents in the class are men or women.

The criterion to be used in determining the value of work is the composite of the skill, effort and responsibility normally required in the performance of the work, and the conditions under which it is normally performed. An employer cannot reduce the wages of any employee in order to implement pay equity.

Differences in compensation are not considered discriminatory, however, if they result from a formal appraisal system or a seniority system that do not discriminate on the basis of gender, or from a skills shortage causing a temporary inflation in wages. In such a case, however, the employer usually must establish that similar differences exist between the employees in the male-dominated class affected by the shortage and another male-dominated class performing work of equal or comparable value.

Every public sector employer must take such action as may be necessary to implement pay equity for its employees, and must, throughout the process, meet and negotiate with the appropriate bargaining agents making every reasonable effort to reach agreement respecting the implementation of pay equity. The employer and bargaining agents must jointly endeavour to reach an agreement respecting the development or selection of a gender-neutral job-evaluation plan as well as the classes to which the plan will be applied. The parties must jointly apply the plan in accordance with the agreement and decide the allocation of the quantum of pay equity adjustments to be made. In the event that the parties fail to reach an agreement, any contentious matter is referred to a board or a bureau which, in most cases, is established by the Act.

The Pay Equity Act of any given jurisdiction provides various stages and deadlines in the implementation of a pay equity program. For example, Nova Scotia's legislation requires that the following deadlines be met:

Within six months of the beginning of the process, an employer and all its employee representatives must endeavour to agree to a single system, that does not discriminate on the basis of sex, for the evaluation of all job classes.

Within 21 months of the beginning of the process, the parties must apply the job evaluation system to determine and compare the value of the work performed.

Within 24 months of the beginning of the process, the parties must endeavour to agree to the quantum, allocation and orderly implementation, over a period not exceeding four years, of the pay adjustments required to achieve pay equity, in accordance with the terms of the Act.

Ontario's Act also establishes a timetable for the implementation of pay equity. Public sector employers must have begun making wage adjustments two years after the date of proclamation (January 1, 1988) and have achieved full implementation of their pay equity plans within seven years of proclamation. Private sector employers must have begun making wage adjustments three to six years after proclamation, depending on the number of employees at their service. Each employer is required to make annual adjustments in rates of compensation equal to at least one percent of his annual payroll for the preceding year until pay equity is achieved.

Similarly, in Manitoba, the Act presents a phased approach intended to provide pay adjustments over a four year period at a rate of one percent per year to spread out the cost of pay equity estimated at four percent of the government's total payroll. This process began on September 30, 1987, date by which the Government and the appropriate bargainning agents were required to reach an agreement respecting the quantum, allocation and orderly implementation of pay equity wage adjustments. Prior to this, the parties were required to agree to a single gender-neutral job evaluation system to apply to all job classes in the civil service, and, in accordance with the agreement, determine and compare the value of the work performed by female-dominated and male-dominated classes.

New Brunswick adopted the same approach. Pay equity adjustments are limited to one percent of the government's payroll for the preceding year during four consecutive 12-month periods. The process began 60 days after the Pay Equity Act came into force (proclaimed on June 22, 1989). Within 12 months the parties must have jointly endeavoured to reach an agreement respecting: 1) the selection of a single gender-neutral job evaluation system; 2) the identification of all female-dominated and male-dominated classes of employment; and 3) the manner in which the job evaluation system is to be applied to the identified job classes. Within 24 months, the parties must apply the job evaluation system to determine and compare the value of the work performed and determine the amount of pay equity adjustments that are required. Within 27 months, the parties must reach an agreement on how the allocated amount is to be distributed among the female-dominated groups. Any dispute at any stage of the process is referred to an arbitrator named by the Chairman of the Public Service Labour Relations Board.

Finally, in Prince Edward Island's civil service, negotiations must begin three months after the Act comes into force, (October 1, 1988) and for other public sector employers (including Crown corporations and agencies, school boards, the College and the University, hospitals and nursing homes, etc.) 15 months after proclamation.

Within two years from the commencement of negotiations (Stage I), pay equity adjustments (Stage IV) must begin to be made. Stages II and III consist in the application of the evaluation plan or system and in the allocation of the quantum of pay equity adjustments.

A public sector employer is required to make annual pay adjustments equal to not more than one percent of the total payroll for the preceding year until pay equity is achieved. Amounts in excess of one percent may be required for the purpose of making retroactive adjustments under a pay equity agreement, or when so ordered by the Commissioner of Pay Equity or an arbitration board, or to combine the last two annual adjustments if the amount remaining in the final year is less than one percent.

10. EQUAL PAY

Jurisdiction	Legislation	Act Refers to . . .	Equal work/Value (Criteria)
Federal	Canadian Human Rights Act (s.11) Canada Labour Code (s.182)	Salaries as well as other forms of compensation	Equal value – composite of skill, responsibility, effort and working conditions.
Alberta	Individual's Rights Protection Act (s.6)	Rate of pay	Similar or substantially similar work. (s.6(1)a))
British Columbia	Human Rights Act (s.7)	Rate of pay	Similar or substantially similar – skill, effort, responsibility. (s.7(1))
Manitoba	Employment Standards Act, Part IV (s.44)	Wages	Same or substantially the same job duties, reponsibilities, services. (s.45(2))
	Human Rights Code – Part II (s.14)	Any aspect of an employment or occupation as defined in the Code	Equal pay for similar work.
	Pay Equity Act (Compulsory compliance only in the public sector)	Any form of remuneration or benefit for work performed (s.1)	Equal or comparable value – composite of skill, effort, responsibility and working conditions. (ss.1, 6(1))
New Brunswick	Human Rights Act – general discrimination (s.3)	Any term or condition of employment	Not specified.
	Employment Standards Act (s.37.1)	Rate of pay	Substantially the same – skill, effort, responsibility and similar working conditions.
	Pay Equity Act (applies to Part 1 of the Public Service, comprised of all departments, most governmental agencies and certain hospitals). (s. 3)	Rate of pay (salary and compensation practices). (ss.7, 8)	Pay equity (i.e., equal or comparable value) - composite of skill, effort, responsibility and working conditions. (s.1(2))
Newfoundland	Human Rights Code (s.10)	Wages, benefits	Same or similar work under same or similar working conditions, similar skill, effort, responsibility (s.10(1))

Jurisdiction	Legislation	Act Refers to . . .	Equal work/Value (Criteria)
Nova Scotia	Labour Standards Code (s.57)	Wages	Substantially the same work, in the same establishment, substantially equal skill, responsibility, effort, similar working conditions. (s.57)
	Human Rights Act – general discrimination (s.12)	Conditions of employment (s.12(d))	Not specified.
	Pay Equity Act (applies to the civil service and to the greater part of the broader civil service, i.e., to universities, municipalities and municipal enterprises as well as to public sector corporations or bodies specified in the regulations) (s.4(1))	Rate of pay (Salary or compensation)	Pay equity (i.e. equal value) – composite of skill, effort, responsibility and working conditions. (s.13(5))
Ontario	Employment Standards Act (s.33)	Rate of pay	Substantially the same work, requiring substantially same skill, responsibility, effort, working conditions. (s.33)
	Human Rights Code – general discrimination (s.4)	Conditions of employment	Not specified.
	An Act to provide for Pay Equity (applies to the public and private sectors)	Compensation	Pay equity (i.e., equal value) – composite of skill, effort, responsibility and working conditions. (s.5)
Prince Edward Island	Human Rights Act (s.7)	Rate of pay	Substantially the same work, requiring equal education, skill, experience, effort, responsibility, similar working conditions. (s.7(1))
	Pay Equity Act (applies to the public sector) (s.1(e))	Wages	Pay equity (i.e. equal or comparable value) – composite of skill, effort, responsibility and working conditions. (s.7(1))
Québec	Charter of Human Rights and Freedoms (s.19)	Wages	Equivalent work (i.e., work of equal value). (s.19)

10. EQUAL PAY (continued)

Jurisdiction	Legislation	Act Refers to . . .	Equal work/Value (Criteria)
Saskatchewan	Labour Standards Act, Part III (s.17)	Rate of pay	Similar work, similar skill, responsibility, effort, working conditions. (s.17(1))
Northwest Territories	Fair Practices Act (s.6)	Rate of pay	Similar or substantially similar work, job duties or services. (s.6(2))
Yukon	Employment Standards Act (s.42)	Rate of pay	Similar work under similar conditions, skill, effort, responsibility. (s.42)
	Human Rights Act (s.14) (applies only to the public sector, which includes municipalities)	Wages	Equal value – composite of skill, effort, responsibility and working conditions. (s.14(3))

10. EQUAL PAY (continued)

Jurisdiction	"Reasonable Factors" Which Justify a Difference in Pay	Complaint Procedure	Restrictions on Recovery of Wages – Time Limit or Monetary
Federal	Different performance ratings, seniority, red circling, rehabilitation assignments, demotion-pay procedure, phased-in wage reductions, temporary training, labour shortage, change in work performed (guidelines).	Complainant, or a group of complainants initiates an investigation; settlement may be attempted at all stages; the Commission may appoint a conciliator. If there is no settlement, a human rights tribunal may be appointed. Failure to comply with the tribunal's decision is an offence punishable by fine. The decision may be appealed to a court. (ss.40 et seq.)	No monetary limit, limitation period of two years prior to complaint.
Alberta	Any factor other than sex if the factor normally justifies a difference.	Complaint referred from officer to supervisor to assistant director may be heard by Human Rights Commission (s.20), board of inquiry and Supreme Court of Alberta. (s.33)	Recovery of wages restricted to 12-month period prior to termination or commencement of proceedings. (s.6(6)(c))
British Columbia	Seniority, merit, or system which measure quantity or quality of production (s.(7(2)); factor other than sex. (s.7(3))	Investigations proceed to board of inquiry; if no settlement proceed to Supreme Court of B.C.	Recovery of wages restricted to 12-month period prior to termination or commencement of proceedings. (s.7(5)(a))
Manitoba	Under the Employment Standards Act: " Factors other than sex" in opinion of wages board. (s.45(3)) Under the Human Rights Code: "bona fide and reasonable requirements or qualifications for the employment or occupation". (s.14(1))	Investigation made, if pay refused then collection is made under Payment of Wage Act. May proceed to Labour Board and county courts. Complaint to the Human Rights Commission. Investigation by the Commission. Mediation may take place to settle the complaint. If there is no settlement, the Commission may request the Minister to appoint an adjudicator or recommend a prosecution for	Wages may be recovered for only one year prior to the date of information and complaint. (s.15(4)) Complaint must be filed within six months of the alleged contravention (extension possible). (s.23)

Jurisdiction	"Reasonable Factors" Which Justify a Difference in Pay	Complaint Procedure	Restrictions on Recovery of Wages – Time Limit or Monetary
Manitoba (continued)	Under the Pay Equity Act, comparisons are made only between male-dominated and female-dominated classes of employees, which are usually composed of 70% or more employees of the same sex. Because exact allocation of pay equity wage adjustments must be negotiated, any factor may be considered. (ss.1, 8, 9, 13, 14)	an alleged contravention of the Code. An adjudicator may issue a remedial order which may be filed in court and enforced as a judgment of the court. (ss.22, 26, 29, 32, 43, 48) Management and labour are responsible for the development or selection, and application of a job-evaluation system. They must also reach a subsequent agreement respecting the exact allocation of the pay equity wage adjustments. Should the parties fail to reach the required agreements in the time prescribed, impasses will be resolved by an arbitration board for the Civil Service and by the Manitoba Labour Board for Crown entities and external agencies. (ss.8, 9, 10, 13, 14, 15)	Pay equity wage adjustments will have begun being made no later than September 30, 1987 in the Civil Service and no later than September 30, 1988, in Crown entities and external agencies. Wage adjustments may be limited to 1% of the government's total payroll per year, over a period of four years. (ss.7(3), 9(1)c), 13(1)c))
New Brunswick	Under the Human Rights Act: "Bona fide" occupational qualifications as decided by Commission.	Investigation; Commission will decide settlement and attempt conciliation. May be appealed to board of inquiry. Failure to comply constitutes a summary conviction offence. (ss.19 and fn)	None

Jurisdiction	"Reasonable Factors" Which Justify a Difference in Pay	Complaint Procedure	Restrictions on Recovery of Wages – Time Limit or Monetary
New Brunswick (continued)	Under the Employment Standards Act: seniority system; merit system; quantity or quality of production; or any other system or practice that is not otherwise unlawful.	Director of employment standards investigates and decides the case (ss.63, 65). He may appoint a mediator (s.64). An appeal may be lodged to the Tribunal. (s.67). The Director's or the Tribunal order may be filed in the Court of Queen's Bench and be executed as a judgment of that Court. (s.74) Civil remedy may also be sought. (s.76)	Limitation period of 12 months after the alleged violation or denial of a complaint to the Director. (s.61) No monetary limit.
	Under the Pay Equity Act: seniority system; temporary training or development assignment; merit pay plan; red-circling; skills shortage causing a temporary inflation in pay. (s.4)	An arbitrator must be named if it becomes apparent that the parties will fail to reach an agreement required under this Act within the specified period (s.12). The arbitrator must render a decision within 60 days. (s.15)	The parties must agree on how the allocated amount is to be distributed among the female-dominated classes and how the pay equity adjustments are to be implemented (s.11). This agreement takes precedence over the terms of a collective agreement (s.11). The pay equity adjustments are limited to one percent of the government's annual payroll for the preceding year during four consecutive 12-month periods. (s.9(2))
Newfoundland	Seniority s.10(1)(a); merit s.10(1)(b)	Complaint to director may be referred to the Minister. The Minister may refer to a Commission. Appeal to courts available.	None

Jurisdiction	"Reasonable Factors" Which Justify a Difference in Pay	Complaint Procedure	Restrictions on Recovery of Wages – Time Limit or Monetary
Nova Scotia	Under the Labour Standards Code: "factor other than sex". (s.57(2))	Complaint made to director and investigation is made. A settlement can be attempted. If no settlement is reached the case will be referred to a tribunal with appeal to court. (s.60)	None
	Under the Pay Equity Act (s.13(4)): seniority system; temporary training or development program or assignment; a merit pay plan based on formal performance ratings; skills shortage causing a temporary inflation in pay.	If an employer and its employee representatives fail to come to an agreement respecting a job evaluation system, its implementation or the exact quantum of pay equity adjustments, the matter is referred to the Pay Equity Commission. (s.7(1)c))	Each employer and its employee representatives must agree to the exact quantum, allocation and orderly implementation, over a period not exceeding four years, of the pay equity adjustments required to achieve pay equity (s.14(1)).
Ontario	Under the Employment Standards Act: seniority system (s.33(a); merit system (s.33(b); quantity or quality of production (s.33(c); any "factor other than sex". (s.33(d)	The employment standards officer investigates and decides the case. The director has discretion to review or appeal decision (s.33(4)); there is a general penalty provision; contravention is a summary offence; there is also a civil remedy.	Assessment by employment standard officer limited to $4 000. No restriction if assessed by Provincial Court. Limitation – two years from time director received notice (ss.47, 63)
	Under the Act to provide for Pay Equity (s.8): seniority system; temporary postings equally available to male and female employees that lead to career advancement; red circling; merit pay; skills shortage causing a temporary inflation in compensation; differences resulting from bargaining strength, once pay equity has been achieved; casual employment.	A review officer first investigates objections and complaints, and endeavours to effect a settlement; may monitor the preparation and implementation of pay equity plans and assist the parties; appeals may be lodged, or referrals made to the Pay Equity Hearings Tribunal; review officers and Hearings Tribunal are invested with sufficient powers to correct a situation in order that pay equity be achieved.	Each employer required to make annual adjustments of at least 1% of annual payroll until pay equity is achieved. Public sector employers have seven years to achieve full implementation of their pay equity plans, in effect, until January 1, 1995.

Jurisdiction	"Reasonable Factors" Which Justify a Difference in Pay	Complaint Procedure	Restrictions on Recovery of Wages – Time Limit or Monetary
Prince Edward Island	Under the Human Rights Act: seniority (s.7(a); merit (s.7(b); quantity or quality of production or performance (s.7(c); factors may not be based on discrimination.	Civil action in Supreme Court or complaint to Commission, followed, if dispute has not been settled, by investigation by Board of Inquiry. Board of Inquiry reports on recommended action to Commission and Commission recommends necessary action to Minister. The Minister may issue any order he considers necessary to give effect to the recommendation. The Minister may also apply for a court order prohibiting the person in question to continue the offence under the Act.	Civil action must commence within 12 months from discriminatory action. A person can only claim wages which would have been earned during 12 months immediately preceding termination of employment or the commencement of the proceedings, whichever occurred first. (s.7(4)) Complaints to Commission must be filed within 12 months of the alleged violation of the Act. (s.22)
	Under the Pay Equity Act (s.8): performance appraisal system; seniority system; skills shortage causing a temporary inflation in wages.	If the parties cannot come to an agreement respecting the choice or development of a single gender-neutral job-evaluation plan or system, its implementation, or the exact quantum of pay equity adjustments to be made, the matter is referred to an arbitration board constituted under s.40 of the Labour Act (s.16). A Pay Equity Bureau is established which has sufficient powers to ensure compliance. The Act sets out a complaint mechanism, as well as protection against intimidation, coercion, penalties or discrimination for participating in process or seeking enforcement. (ss.5, 6, 18)	Each employer is required to make annual pay adjustments of not more than 1% of annual payroll until pay equity is achieved. (ss.10, 11)

Jurisdiction	"Reasonable Factors" Which Justify a Difference in Pay	Complaint Procedure	Restrictions on Recovery of Wages – Time Limit or Monetary
Québec	Under the Charter of Human Rights and Freedom, experience, seniority, years of service, merit, productivity or overtime are not discriminatory if these criteria are common to all members of the personnel (s.19)	The Commission tries to conciliate; it then makes recommendations. The Commission or the victim can apply to the Human Rights Tribunal for an injunction against an employer who refuses to comply with a recommendation by the Commission. Any decision of the Tribunal may be appealed to the Court of Appeal with leave from one of the judges thereof. (ss.81-86 and 100 et seq.)	None
Saskatchewan	Under the Labour Standards Act: Seniority; merit (s.17(1))	The Director of Labour Standards appoints an officer to investigate the case and try to effect a settlement (s.18). If no settlement is reached a Human Rights Commission will make a formal inquiry. Failure to comply with the decision is a summary conviction offence. The decision may be appealed in court. (ss.19 to 22).	No monetary restriction; wages assessed from time violation occurred.
Northwest Territories	Under the Fair Practices Act: "Factor other than sex" (s.6(3))	Complaint made; an officer is appointed by the Commission (s.7). If there is no settlement the complaint will proceed before the Commission. There is an appeal to the Supreme Court. (s.8).	None

Jurisdiction	"Reasonable Factors" Which Justify a Difference in Pay	Complaint Procedure	Restrictions on Recovery of Wages – Time Limit or Monetary
Yukon	Under the Employment Standards Act: seniority (s.42(1)a)); merit (s.42(1)b)); quantity of quality of production (s.42(1)c)); factor other than sex. (s.42(1)d))	The Director of Employment Standards can determine the amount of unpaid wages. (s.45) If the Director can't resolve the complaint, he may refer it to the Board. The Director of Employment Standards will investigate. There is a right of appeal to the Supreme Court. (ss.72, 73, 76(5), 93)	Recovery of wages restricted to one year after the date the payment of wages owing was to be made. (s.69(1)a))
	Under the Human Rights Act (s.9): Reasonable requirements or qualifications for the employment; other factors establishing reasonable cause for discrimination.	Commission investigates a complaint and decides the matter; Commission may ask a Board of Adjudicators to decide the complaint. (ss.20 to 26); Appeal may be lodged to the Supreme Court. (s.26)	A complaint must be made within six months of the alleged contravention.

WEEKLY REST-DAY

HISTORICAL BACKGROUND

It is important to distinguish between two types of legislation when discussing the weekly rest-day: first, provisions of a secular nature normally included in the employment standards laws, the purpose of which is to provide a uniform day of rest from labour, or to limit the number of hours which may be worked in any week; and second, the Lord's Day legislation, which appears to have a religious purpose (i.e., to protect Sundays as the universal day of Sabbath) and is less directly concerned with employees' rights or employers' obligations. With respect to employment standards legislation *per se*...

> "...the notion that provincial weekly rest legislation is strictly secular has been accepted for purposes of the delineation of constitutional legislative authority, but in fact the legislation of at least five provinces [to be precise: six provinces and both territories] provides that the weekly rest day is to be on Sunday, "if possible".(...) In every jurisdiction the weekly rest law is also subject to the same sort of exceptions, either in the statute itself or by regulation, as is every other part of the labour standards legislation."[16]

The predominant statute in the second area is the federal Lord's Day Act. Because it makes the non-observance of Sunday as a day of rest a criminal offence, it has been deemed a valid exercise of the federal's power over criminal law. But the subject of the weekly rest-day falls into the same general category as holidays and vacations, thus coming within the provincial power over "property and civil rights" and within the concurrent federal power over the domains of its exclusive jurisdiction.

The origins of this Act date back some 200 years. The Act in its present form remains substantially unchanged from the 1907 version when it was first adopted. But even prior to the turn of the century, legislation of this nature has existed. Traces of "An Act to prevent the Profanation of the Lord's Day in Upper Canada" are to be found in the statute books of the "Provinces and of Canada", dating back to the eighth year of Queen Victoria's reign, 1845. That Act was modeled after the laws of Great Britain on the same matter. These laws, by their true nature and character of the domain of criminal law, were, by virtue of constitutional law, "continued" in Québec in 1774, and in Upper Canada in 1792. That Act made it unlawful "to do or exercise any worldly labour, business or work of one's ordinary calling", words that are still used exactly in today's Lord's Day Act. In addition, that Act excepted "conveying travellers or Her Majesty's Mail, selling Drugs and Medicines, and other works of necessity, and works of charity" in much the same way that a long list of "works of necessity" are exempted under the terms of today's Lord's Day Act.

The Lord's Day Act, because of its criminal nature, had always affected the constitutional powers of both levels of government in the labour law field. As mentioned previously, the weekly rest-day would otherwise normally have fallen within the meaning of "property and civil rights", an area of legislative activity exclusively reserved to the provinces. In the 1907 version of the Lord's Day Act, the federal government chose to recognize permissive provincial legislation on Sunday work and to re-establish the normal balance of powers, to the extent that the provinces could purposefully "disembowel" the Act by adding to the long list of exemptions already contained in it.

> "The recognition of permissive provincial legislation in s. 4 of the Lord's Day Act, in effect, reverses the normal supremacy of Acts of Parliament over the statutes of the provincial legislature".[17]

In addition, the question of Sunday closings has recently come to the fore again since the adoption of the Canadian Charter of Rights and Freedoms. Under the Charter, it may be considered unlawful and discriminatory on the basis of religion to protect Sunday as the universal day of Sabbath. This has provided the impetus to change certain laws recently, and has brought about more permissive practices relative to the operation of commercial establishments on Sunday, in some jurisdictions.

THE PRESENT SITUATION

Generally, the employment standards legislation provides one full day of rest per week, on Sunday, wherever possible. These provisions, coupled with the Lord's Day legislation, still effectively promote Sunday as the uniform day of rest from labour. Indeed, normally only those employers falling within one of the exceptions of the federal Lord's Day Act, or within one of the further exceptions fixed by provincial Lord's Day legislation or by municipal by-law pursuant to such legislation, may operate their businesses on Sunday. Moreover, if they do, they must still meet their obligation under the employment standards legislation to make Sunday the uniform day of rest, wherever possible.

However, provincial legislation and municipal by-laws have become increasingly permissive, as more and more jurisdictions attempt to reasonably accommodate persons on the grounds of freedom of conscience or of religion. Reconciling the aims of "reasonable accommodation" and of "protecting the sabbath" has resulted in a variety of approaches being taken. These, in turn, have led to a lack of uniformity among the provinces with regard to the weekly day of rest.

For example, Prince Edward Island now makes provision whereby an establishment may be operated on a day of rest "by a person who, on the grounds of conscience or religion, observes another day without labour and closes his retail business or refrains from carrying on his ordinary occupation". Saskatchewan provides that establishments not exceeding a certain size may be open for business on Sundays provided they were closed one day during the period of six days immediately preceding the Sunday because of the dictates of the owner's or operator's religion. Manitoba and Ontario make similar provision, but require that the operation be closed on the preceding Saturday, and do not go as far as stipulating that the motive for this be based on "conscience or religion".

Alberta's, British Columbia's and Québec's employment standards legislation provide a specified number of consecutive hours of rest each week, but do not specify on which day. These acts provide a day's rest, but not necessarily a uniform day of rest and not necessarily on Sunday.

Since 1985, the Lord's Day Act, or the equivalent legislation, has been repealed in Manitoba, New Brunswick, Québec and the Northwest Territories, with seemingly varying effects. Manitoba's Act was replaced by the Retail Businesses Holiday Closing Act, which provides, among other things, that a retail business may be open for business on a Sunday if the establishment was closed on the immediately preceding Saturday, and if no municipal by-law issued pursuant to the Shops Regulation Act prevents it. In New Brunswick, the Days of Rest Act replaced the Lord's Day Act, with relatively little resulting change, except that municipalities may now, by by-law, permit all retail businesses to operate on the weekly day of rest. In Québec, the Commercial Establishment Business Hours Act was replaced by the Act respecting opening hours and days for commercial establishments. The new Act establishes that commercial establishments may not be open on Sundays, except during certain periods such as during the weeks preceding Christmas. Other exceptions concern certain types of establishments, such as restaurants, gas stations and drug stores, which are allowed to open to the public on Sundays, provided certain conditions relating mainly to the products sold, are met. In addition, when all their establishments are closed on a day of the week other than a Sunday by reason of religious beliefs, establishments' operators may apply for permission to open on Sundays provided certain conditions are met, including the requirement that no more than four persons attend the operation of each establishment between 8:00 a.m. and 5:00 p.m. on Sundays. In the Northwest Territories, aside from the Labour Standards Act which provides one full day of rest each week, preferably on Sunday, the only other restrictive legislation which applies is the federal Lord's Day Act.

In almost all jurisdictions (except Québec and the Northwest Territories), municipalities have the power to regulate, in one way or another, Sunday hours at commercial establishments. In Alberta, municipalities may pass by-laws, under certain conditions, to permit the carrying on of any commercial activity after 1:30 p.m. on Sunday. Similar powers, but with no time limitation, exist in British Columbia, New Brunswick, Newfoundland and Ontario. Ontario also provides that employees in retail business establishments that are permitted to open on Sunday are entitled to refuse Sunday work that they consider unreasonable. In

the Yukon, the municipalities' powers are limited to passing by-laws to permit Sunday sports, movies, theatrical performances, concerts or lectures after 1:30 p.m. In Nova Scotia, Prince Edward Island and Saskatchewan, municipalities may only further restrict Sunday activities. Municipalities in Manitoba also may pass by-laws to prohibit the carrying on of commercial activities on Sunday, and since the repeal of the province's Lord's Day Act, municipalities dispose of the only remaining discretionary powers respecting Sunday closings. Thus, in Manitoba, if a municipality adopts no Sunday by-law, nothing prohibits commercial activities to take their course on Sunday.

GENERAL HOLIDAYS WITH PAY

General holidays are days that have been decreed by governments to hold special meaning. Some are of national importance and others of local significance. Some commemorate an historical event, whereas others are religious in nature. Whatever the case, every jurisdiction in Canada provides through its legislation for the celebration of specified holidays. During these special days workers are often required to be idle and businesses to be closed.

> "In the employment context statutory, general or public holidays are those days upon which employers are compelled by law to grant their employees a holiday or, where the employees agree to work, to pay them at a premium rate."[18]

HISTORICAL BACKGROUND

Paid holidays, as a matter of right, first appeared in Saskatchewan's legislation in 1947. Under this provision of general application, employees were entitled to a specified number of paid holidays. If they were required to work, employees were entitled to be paid at a premium rate for work done on the holiday, in addition to their regular pay.[19]

Saskatchewan's provision, which would provide the model for contemporary paid holidays provisions, also proved to be well ahead of its time. Although other attempts were made, it was only in 1965 and 1966 that Alberta and the federal jurisdiction, respectively, followed suit with legislation of similar scope. By 1972, only six jurisdictions (Saskatchewan, Alberta, the federal jurisdiction, British Columbia, Manitoba and Nova Scotia) had enacted such legislation. Prince Edward Island, the last Canadian jurisdiction to enact general holidays with pay provisions, did so in 1987.

Other legislation, which evolved in parallel to these provisions, is concerned with hours of business (or shops closings) or is simply declaratory in nature. These statutes normally do not impose upon the employer the obligation to pay employees for a holiday not worked. For example, the federal Holidays Act provides that Dominion Day, Remembrance Day and Victoria Day are legal holidays and "shall be kept and observed as such...throughout Canada". The Bills of Exchange Act establishes the non-juridical days and the Interpretation Act gives a definition of holiday, but none of these acts impose a particular obligation. In effect, however, some of the holidays so decreed by these acts are also paid statutory holidays under the Canada Labour Code.

THE PRESENT SITUATION

The number of statutory holidays to which an employee is entitled varies from one jurisdiction to another. Six of them - the federal jurisdiction, Alberta, British Columbia, Saskatchewan and the two territories - provide nine paid general holidays. Ontario provides eight, Manitoba and Québec seven, New Brunswick six, and Newfoundland, Nova Scotia and Prince Edward Island five.

Holidays common to all are New Year's Day, Good Friday, Labour Day and Christmas Day. In addition, Dominion Day (or Canada Day) is a statutory holiday with pay in every jurisdiction except Newfoundland. Other widely celebrated days include: Victoria Day, Thanksgiving Day and Remembrance Day. To these holidays, the Canada Labour Code and Ontario's Employment Standards Act add Boxing Day.

Most jurisdictions establish certain conditions or prerequisites that an employee must meet before being entitled to the specified holidays with pay. Fairly representative is the New Brunswick provision which stipulates that an employee has no right to pay for a holiday not worked if he or she: 1) has been employed for less than 90 days; 2) fails to work his or her regularly scheduled day of work preceding or following the holiday; 3) fails to report for and perform the work after having agreed to work on the holiday; or 4) is employed under an arrangement whereby he or she may elect to work or not when requested to do so. Certain jurisdictions also add the requirement that an employee must have earned wages on at least 15 days during the 30 calendar days preceding the holiday. Only Saskatchewan sets no such conditions and grants the holiday universally.

Moreover, it is usually possible for an employer and an employee (or his trade union) to agree to substitute at their convenience a holiday for another day, which cannot be later than the employee's annual vacation. The statutes also generally provide that when a holiday falls on a Saturday or Sunday that is a non-working day, it shall be granted on the working day immediately preceding or following the general holiday. Similarly, an alternate day off may be granted if the holiday falls on any other day which is normally a non-working day for an employee.

The pay for a holiday not worked is the employee's regular pay, except in certain industries like construction where it is usually a lump sum of 3.5 or 4 percent of gross annual earnings, paid at the end of each year. The pay for a holiday worked is generally the employee's regular pay plus a premium rate of time and one-half for all hours worked on that day. British Columbia further provides that hours worked in excess of 11 on a holiday shall be remunerated at two times the regular rate. As mentioned previously, some jurisdictions offer an alternative in that, instead of paying the premium rate, the employer may give the employee another day off with pay.

The Canada Labour Code, and the legislation of British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario and the Yukon, contain special provisions respecting pay for holidays worked in a continuous operation. Similar provisions exist in various jurisdictions respecting seasonal industries, hotels, motels, tourist resorts, restaurants, places of amusement, hospitals, service stations, etc. Such provisions usually allow more flexible alternatives with regard to holiday pay. For example, the Code provides for, with respect to continuous operations, the regular pay plus: a) one and one-half times the regular rate; or b) another day off with pay; or c) pay for the next non-working day.

11. PAID GENERAL HOLIDAYS

Jurisdiction and Legislation	Holidays	Pay for Holidays Not Worked	Exceptions	Pay for Holidays Worked
Federal Canada Labour Code and Labour Standards Regulations	New Year's Day Good Friday Victoria Day Dominion Day Labour Day Thanksgiving Day Remembrance Day Christmas Day Boxing Day	Regular pay. An employee who is not entitled to wages for at least 15 days during the 30 days immediately preceding the holiday is entitled to 1/20th of the wages he has earned during those 30 days.	No pay for holiday not worked if: 1) holiday occurs during first 30 days of employment; or 2) employee is working under the authority of a permit establishing hours of work in excess of eight in a day or 40 in a week under section 29.1(1). Continuous operations: 1) same as 1) above; 2) employee did not report for work after having been called to work on that holiday; or 3) is unavailable to work on that holiday in contravention to his contract of employment.	Regular pay + 1½ times regular rate. Continuous operations: regular pay + a) 1½ times regular rate; or b) another day off with pay; or c) pay for next non-working day.
Alberta Employment Standards Code and Reg. 81/81	New Year's Day Alberta Family Day Good Friday Victoria Day Canada Day Labour Day Thanksgiving Day Remembrance Day	Regular pay if holiday falls on regular working day for employee. Construction industry a lump sum is paid for general holidays.	No pay for holiday if: 1) employee has been employed less than 30 days during preceding 12 months;	Regular pay + a) 1½ times regular rate for hours worked ; or b) another day off with pay.

Jurisdiction and Legislation	Holidays	Pay for Holidays Not Worked	Exceptions	Pay for Holidays Worked
Alberta (continued)	Christmas Day and any other day so designated		2) does not work on the holiday when requested or scheduled to do so; or 3) is absent without the employer's consent on his regular working day immediately preceding or following a holiday.	
British Columbia Employment Standards Act and Regulations	New Year's Day Good Friday Victoria Day Dominion Day Labour Day Thanksgiving Day Remembrance Day Christmas Day British Columbia Day	Regular pay.	Paid general holiday provisions do not apply to: 1) employees covered by a collective agreement; 2) a manager; 3) an employee during the first 30 days of employment; 4) an employee who has not earned wages for at least 15 of the last 30 calendar days before the holiday occurs; or 5) an employee employed primarily to harvest fruit or berry crops.	1½ times regular pay for the first 11 hours and two times regular pay for each hour worked in excess of 11 + another day off with pay. Continuous operations: regular pay + a) 1½ times regular rate for the first 11 hours worked and two times for hours in excess of 11; or b) another day off with pay.
Manitoba Employment Standards Act and The Remembrance Day Act	New Year's Day Good Friday Victoria Day Canada Day Labour Day Thanksgiving Day	Regular pay. Construction: 4% of gross earnings (excluding overtime) for year.	No pay for a holiday not worked if the employee: 1) has not earned wages for part or all of 15 days during the 30 calendar	1½ times regular rate for all hours worked + regular pay For Remembrance Day: a) twice regular pay; or

Jurisdiction and Legislation	Holidays	Pay for Holidays Not Worked	Exceptions	Pay for Holidays Worked
Manitoba (continued)	Christmas Day Remembrance Day*		days preceding the holiday; 2) did not report for work after having been called to work on the holiday; or 3) is unavailable for work without the employer's consent on his regular working days immediately preceding and following the holiday.	b) regular pay plus one day of leave with pay. Continuous operations, seasonal industry, place of amusement, gasoline service station, hospital, hotel or restaurant and domestic service: regular pay + equivalent compensatory time off with pay within 30 days or as agreed. Construction: 4% of gross earnings (excluding overtime) for year + 1½ times regular rate for days worked.
New Brunswick Employment Standards Act	New Year's Day Good Friday Canada Day New Brunswick Day Labour Day Christmas Day	Regular pay.	Paid general holiday provisions do not apply to an employee who: 1) has not worked for the employer at least 90 days during the 12 calendar months preceding the holiday; 2) fails to work on his regularly scheduled day of work preceding or following the holiday;	Regular pay + a) 1½ times regular rate for hours worked; or b) another day off with pay.

*In Manitoba, there is no requirement that employees be paid for the Remembrance Day holiday if they are not required to work.

Jurisdiction and Legislation	Holidays	Pay for Holidays Not Worked	Exceptions	Pay for Holidays Worked
New Brunswick (continued)			3) fails to report and perform the work without reasonable cause after having agreed to work on a holiday; or 4) is employed under an agreement whereby he elects to work when requested to do so.	
Newfoundland Labour Standards Act	New Year's Day Good Friday Memorial Day Labour Day Christmas Day and such other days as may be proclaimed	Regular pay.	Paid general holiday provisions do not apply to: 1) an employee during the first 30 days of employment; 2) an employee who has been absent for 15 or more of the 30 days preceding the holiday, except for a reason permitted by this Act; or 3) an employee who fails to work on his regularly scheduled day of work preceding or following the holiday. An employee who works less than 20 hours in a week is not entitled to take his next regular working day off if the holiday falls on a day that he would normally not be required to work.	a) Twice regular pay; or b) one full day holiday (paid) within 30 days; or c) add one full day (paid) to annual vacation. Continuous operations, public utility services, or essential services: a) twice regular pay; or b) one full day off with pay within 30 days.

11. PAID GENERAL HOLIDAYS (continued)

Jurisdiction and Legislation	Holidays	Pay for Holidays Not Worked	Exceptions	Pay for Holidays Worked
Nova Scotia Labour Standards Code and the Remembrance Day Act	New Year's Day Good Friday Dominion Day Labour Day Remembrance Day* Christmas Day and any day specified in a regulation	Regular pay.	No pay for holiday worked if an employee: 1) has not earned wages for at least 15 of the 30 calendar days preceding the holiday; or 2) has not worked on his regularly scheduled day of work immediately preceding or following the holiday. Continuous operations: no pay if employee did not report for work after having been called.	Regular rate + 1½ times regular rate. Continuous operations: as above or another day off with pay.
Ontario Employment Standards Act	New Year's Day Good Friday Victoria Day Dominion Day Labour Day Thanksgiving Day Christmas Day Boxing Day	Regular wages. When holiday falls on non-working day or a day of employee's annual vacation: another working day off with pay.	No pay for holiday not worked if an employee: 1) has been employed for less than three months; 2) has not earned wages on at least 12 days during the four work weeks preceding the holiday; 3) fails to work his regularly scheduled day of work preceding or following the holiday;	Regular rate + a) 1½ times regular rate for all hours worked; or b) another day off with pay.

*In Nova Scotia, there is no requirement that employees be paid for the Remembrance Day holiday if they are not required to work.

Jurisdiction and Legislation	Holidays	Pay for Holidays Not Worked	Exceptions	Pay for Holidays Worked
Ontario (continued)			4) fails to report for and perform the work after having agreed to work on the holiday; or 5) is employed under an arrangement whereby the employee may elect to work or not when requested to do so.	Continuous operations, hotel, motel, tourist resort, restaurant, tavern or hospital: a) 1½ times regular rate; or b) regular rate for each hour worked and another day off with pay.
Prince Edward Island Labour Act	New Year's Day Good Friday Canada Day Labour Day Christmas Day and any other specified by regulation.	Regular wages. When holiday falls on non-working day: another working day off with pay.	No pay for a holiday not worked if an employee: 1) has been employed for less than 30 days; 2) fails to work his regularly scheduled day of work preceding or following the holiday; 3) fails to report for and perform the work after having agreed to do so; 4) is employed under an arrangement whereby the employee may elect to work or not when requested to do so; or 5) whose terms and conditions of employment are established by a collective agreement.	Regular rate + a) 1½ times the regular rate for all hours worked; or b) another day off with pay.

Jurisdiction and Legislation	Holidays	Pay for Holidays Not Worked	Exceptions	Pay for Holidays Worked
Québec National Holiday Act & Labour Standards Act and Regulations	January 1st Good Friday (or Easter Monday in certain cases) Dollard Day (or Victoria Day) National Holiday (June 24) July 1st Labour Day Thanksgiving December 25	Regular pay (i.e., the average daily pay for the two weeks preceding the holidays) When holiday falls on non-working day: another working day off or indemnity equal to the average of the daily wages for the two weeks preceding that holiday.	The general holiday provisions do not apply to employees covered by a collective agreement or a decree containing at least six holidays, in addition to the National Holiday. No pay for the National Holiday not worked if an employee has not earned wages for at least 10 days in the period from June 1 to June 23. No pay for holiday not worked if an employee: 1) has not been credited with 60 days of uninterrupted service preceding the holiday; 2) fails to work without the employer's authorization or without valid cause on the day preceding or the day following the holiday.	Regular pay + indemnity equal to wages for a regular day of work or regular pay + one day holiday taken within three weeks before or after that day (in the case of the National Holiday, must be taken on the working day before or after June 24).

11. PAID GENERAL HOLIDAYS (continued)

Jurisdiction and Legislation	Holidays	Pay for Holidays Not Worked	Exceptions	Pay for Holidays Worked
Saskatchewan Labour Standards Act, and Regulations	New Year's Day Good Friday Victoria Day Dominion Day Labour Day Thanksgiving Day Remembrance Day Christmas Day Saskatchewan Day	Regular pay. Construction, lumbering and logging: lump sum. Well drilling: regular pay. Hotel, restaurant, hospital, nursing home and educational institution: regular pay.	None.	Regular pay + 1½ times regular rate. Hotel, restaurant, hospital, nursing home and educational institution: regular pay + : a) 1½ times regular rate; or b) time off equivalent to 1½ times regular rate + one day off at regular wage within four weeks. Well drilling: regular pay + regular rate. Construction: lump sum (3.5% annual gross excluding overtime) + 1½ times regular rate for hours worked. Logging and lumbering: lump sum (3.5% annual gross excluding overtime) + regular rate for hours worked.
Northwest Territories Labour Standards Act	New Year's Day Good Friday Victoria Day Dominion Day First Monday in August Labour Day Thanksgiving Day	Regular pay if holiday falls on regular working day.	No pay for holiday not worked if and employee: 1) has not been employed for 30 days or more during the preceding 12 months;	Regular pay + a) 1½ times regular rate; or b) another day off with pay.

Jurisdiction and Legislation	Holidays	Pay for Holidays Not Worked	Exceptions	Pay for Holidays Worked
Northwest Territories (continued)	Remembrance Day Christmas Day		2) did not report for work on the holiday after having been called to work; 3) has not reported for work, without consent of his employer, on his last regular working day preceding or the first one following the holiday.	An employee who is not required to work on a general holiday, shall not be required to work on another day that would otherwise be a non-working day in the week in which the holiday occurs unless he is paid double time.
Yukon Territory Employment Standards Act	New Year's Day Good Friday Victoria Day Canada Day Discovery Day Labour Day Thanksgiving Day Remembrance Day Christmas Day	Regular pay.	No pay for holiday not worked if an employee: 1) has not been employed for at least 30 days; 2) did not report for work on that day after having been called; 3) has not reported for work, without the consent of his employer, on his regular working day immediately preceding or following the holiday.	Regular pay + 1½ times regular rate. Custodial work, continuous operations and essential services: regular rate + a) another day off with pay; or b) 1½ times regular pay. An employee who is not required to work on a general holiday, shall not be required to work on another day that would otherwise be a non-working day in the week in which the holiday occurs unless he is paid 1½ times regular rate.

ANNUAL VACATIONS WITH PAY

HISTORICAL BACKGROUND

In Canada, an annual vacation with pay is the right of every employee, other than those excepted from the application of the employment standards legislation.

> "Compulsory annual vacations with pay were first required in Canada by the Ontario Hours of Work and Vacations with Pay Act, enacted in 1944. Within three years Saskatchewan, Alberta, British Columbia, Québec and Manitoba had enacted similar legislation and by 1970 an annual vacation with pay had become the right of every employee in Canada, other than those expressly excepted by federal or provincial legislation. Initially, a system of vacation stamp books was used in most jurisdictions but this has now been abandoned, even in the construction industry, in favour of a straightforward statutory obligation upon each employer to provide an annual vacation with pay to each of his employees who qualifies and pay in lieu of vacation to those who do not perform long enough to qualify."[20]

THE PRESENT SITUATION

In all jurisdictions except Saskatchewan, employees are entitled to two weeks annual vacation after each completed year of employment. In Saskatchewan, three weeks are awarded after one year and four weeks after 10. Other jurisdictions offer an increased vacation after a certain number of years of service as well. In Manitoba, an employee is entitled to an additional week for years of service subsequent to the fourth year. In Alberta, British Columbia and in the Northwest Territories, an employee is entitled to a third week after the completion of five years of employment with the same employer. In the latter, the five years need not be continuous and may be accumulated within a period of 10 years. Under the Canada Labour Code, a third week of vacation is awarded to an employee after six consecutive years with one employer. In Québec, an employee who is credited with 10 years of uninterrupted service with the same employer is also entitled to three weeks.

What constitutes a year's employment varies considerably from one jurisdiction to another. In New Brunswick it is defined in terms of working days or shifts. In Manitoba, the employee must have worked 95 percent of his regular working hours in a 12-month period and in Newfoundland and Nova Scotia, 90 percent of the normal working hours must be worked. In Manitoba, the proportion is based on the individual's normal working hours rather than those of the establishment. The same is true of Newfoundland's provision. However in Nova Scotia and New Brunswick the proportion is based on the working time of the establishment. In Saskatchewan, years of employment may be made up of accumulated consecutive periods separated by not more than 182 days. The Québec and New Brunswick Acts establish a reference year for the purpose of calculating an employee's vacation benefits. The Canada Labour Code and the Alberta, British Columbia and Ontario legislation simply stipulate that a year's employment consists of a 12-month period of continuous employment.

The vacation pay is usually set at four percent of the employees' earnings for the period during which an employee establishes the right to a vacation. Vacation pay for an employee entitled to three weeks vacation is generally set at six percent. The acts vary in what is included as earnings, but the gross annual earnings, exclusive of overtime pay, seems to be the norm. In Saskatchewan, vacation pay is defined as 3/52 of annual earnings on completion of one year's service and 4/52 on completion of the tenth and subsequent years. Manitoba requires regular pay during the vacation period; in other words, the pay the employee would have earned for his normal hours of work had he been working.

It is the employer's prerogative to determine when each employee may take an annual vacation, within certain limits laid down by law. The vacation must be awarded within a certain number of months after the date on which the employee becomes entitled to it. This period varies from four months in New Brunswick, to 10 months in the federal jurisdiction, British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario, Prince Edward Island, the

Northwest Territories and the Yukon Territory, to 12 months in Alberta, Québec and Saskatchewan.

Most jurisdictions specify whether the vacation to which an employee is entitled is to be given in one or more unbroken periods. However, legislation from the federal government, Manitoba, the Northwest Territories and the Yukon Territory provides for an annual vacation with no more specific stipulation. Usually, a vacation can be broken into periods of one week at the employer's request. Shorter periods of vacation cannot be imposed; employees must consent. Nine jurisdictions require an employer to give notice to the employee of when the vacation is to begin. This notice period varies from one week to four. In general, laws require vacation pay to be paid at least one day before the vacation begins. If a statutory holiday occurs during the time an employee is on vacation, his vacation may be extended by one day, or the employee must be granted another day off with pay at some other mutually agreed time.

In addition, any portion of unused vacation must be paid upon termination of employment during a working year.

12. ANNUAL VACATIONS WITH PAY

Jurisdiction and Legislation	Length of Vacation	Vacation Pay	When Entitled	When Pay Given
Federal Canada Labour Code and Labour Standards Regulations	a) Two weeks; b) three weeks after six consecutive years with the same employer.	a) 4 % annual earnings ; b) 6% of annual earnings after six years.	In respect of every year of employment, and granted within 10 months of completion of year. The director may approve an application by the employer and/or the employee to waive the right to vacation time or to postpone an employee's vacation.	Within 14 days before vacation begins, or where this method is impracticable, on a payday during or after vacation according to established practice.
Alberta Employment Standards Code	a) Two weeks; b) three weeks after five years with the same employer. Can be taken in periods of not less than one day.	a) 4% of annual earnings; b) 6% of annual earnings. If paid by the month: month's regular pay divided by $4\frac{1}{3}$ for each week of vacation.	Within 12 months after each year's employment.	On the next regularly scheduled pay day, or at the request of the employee, at least one day but not more than two weeks before vacation begins.
British Columbia Employment Standards Act	a) Two weeks; b) three weeks after five continuous years with same employer. The employer cannot require an employee to take his vacation in periods of less than one week's duration.	a) 4% of annual earnings; b) 6% of annual earnings after five years, (i.e., 2% per week of vacation).	At the conclusion of each working year; the vacation time must be granted within 10 months after the anniversary date of employment.	At least one week before vacation begins.
Manitoba Vacations with Pay Act	a) Two weeks; b) three weeks after four years (four years' service must be completed within 10 years).	Regular pay.	On completion of year's service; the vacation time must be granted within 10 months after the 12-month qualifying period.	At least one day before vacation begins. Salaried employees may be paid on regular payday if they agree.

12. ANNUAL VACATIONS WITH PAY (continued)

Jurisdiction and Legislation	Length of Vacation	Vacation Pay	When Entitled	When Pay Given
New Brunswick Employment Standards Act	Two weeks; to be taken in one unbroken period of two weeks.	4% of annual earnings.	No later than four months after end of vacation pay year (July 1 – June 30).	At least one day before vacation begins.
Newfoundland Labour Standards Act	Two weeks; to be taken in one unbroken period or two unbroken periods of one week each, unless the employer and employee agree otherwise.	4% of annual earnings.	Within 10 months after 12-month period.	At least one day before vacation begins.
Nova Scotia Labour Standards Code	Two weeks; to be taken as agreed but must include one unbroken period of one week.	4% of annual earnings.	Within 10 months after 12-month period.	At least one day before vacation begins.
Ontario Employment Standards Act	Two weeks; to be taken in one unbroken period or two unbroken periods of one week each, as determined by the employer.	4% of annual earnings.	After 12 months of employment. The leave must be granted not later than 10 months after the period in which the vacation was earned. Any agreement between the employer and the employee respecting payment in lieu of vacation is subject to the approval of the director.	On the regular payday of the employee during the vacation period, or at a time designated by the director.
Prince Edward Island Labour Act	Two weeks; to be taken in one unbroken period.	4% of annual earnings.	After 12-month period.	At least one day before vacation begins.

12. ANNUAL VACATIONS WITH PAY (continued)

Jurisdiction and Legislation	Length of Vacation	Vacation Pay	When Entitled	When Pay Given
Québec Act Respecting Labour Standards	a) Two weeks after one year; b) three weeks after 10 years. If less than one year of service: one day/month up to a maximum of two weeks. The annual leave may be divided into two periods where so requested by the employee, unless a provision of a collective agreement or of a decree provides otherwise, or unless the employer closes his establishment for the annual leave period. A leave not exceeding one week cannot be divided.	a) 4% of gross wages during the reference year (May 1 – April 30); b) 6% after 10 years.	Within 12 months after the end of the reference year, unless the terms of a collective agreement or a decree permit it to be deferred. At the request of the employee, the third week of leave may be replaced by a compensatory indemnity if the establishment closes for two weeks on the occasion of the annual leave.	In a lump sum before the leave begins.
Saskatchewan Labour Standards Act	a) Three weeks after one year; four weeks after 10 years; b) to be taken in continuous periods of at least one week.	a) 3/52 of annual earnings; b) 4/52 of annual earnings.	Within 12 months after each year of employment. The employer and the employee may enter into an agreement that, because of a shortage of labour, the employee will not take the vacation time to which he or she is entitled.	During 14 days before vacation begins.
Northwest Territories Labour Standards Act	a) Two weeks after one year; b) three weeks after five years.	a) 4% of annual earnings; b) 6% of annual earnings	Within 10 months after the year of employment for which the employee became entitled to a vacation. A labour standards officer may	At least one day before vacation begins.

12. ANNUAL VACATIONS WITH PAY (continued)

Jurisdiction and Legislation	Length of Vacation	Vacation Pay	When Entitled	When Pay Given
Northwest Territories (continued)			approve an application by the employer and/or the employee to waive the right to vacation time or to postpone the vacation.	
Yukon Territory Employment Standards Act	Two weeks.	4% of annual earnings.	Within 10 months following the completion of the qualifying year of employment. The employer and employee may enter into an agreement that the latter will not take the vacation time to which he or she is entitled.	At least one day before vacation begins.

PARENTAL LEAVE

Parental leave is a generic term which includes maternity as well as paternity and adoption leave. While maternity leave is the primary focus, it is obvious that a discussion of parental leave provisions would not be complete without a mention of unemployment insurance benefits or of adoption and paternity leave provisions.

HISTORICAL BACKGROUND

The right to maternity leave was first introduced in British Columbia's Maternity Protection Act in 1966 and in the Canada Labour Code in 1970. By 1988, all the jurisdictions had enacted such provisions.

> "The right to maternity leave for women in the labour force has not been obtained easily. The process of gaining acceptance for the concept has, by necessity, included a process of gaining acceptance not only of women in the work force but also of the right of those women to work on an equal footing with others. So many who previously opposed maternity leave did so by arguing that such a provision constituted "special" treatment for women and therefore had nothing at all to do with equality. The point, of course is that men do not get pregnant and that if women are to have equal rights in the work force they must not be penalized because they are the ones in our society who bear children."[81]

THE PRESENT SITUATION

The typical maternity leave provisions in Canada provide that a pregnant employee will be entitled to a leave of absence without pay, for a period of 17 weeks where the employee has completed 12 continuous months of employment; has submitted a written request for leave several weeks ahead of time; and provides the employer with a medical certificate stating that she is pregnant and estimating the probable date of birth. Usually, the leave may commence no earlier than 11 weeks before the expected date of birth and must end no later than 17 weeks following the actual date of birth.

Certain jurisdictions offer more generous provisions than these. The Northwest Territories awards 20 weeks maternity leave, whereas Alberta, British Columbia, Québec and Saskatchewan provide 18 weeks leave. Moreover, British Columbia, New Brunswick and Québec award the leave to any pregnant employee, regardless of the length of service. Some jurisdictions allow the pregnant employee to commence her leave earlier than 11 weeks before the expected date of birth: Québec allows the leave to commence 16 weeks prior to the expected date of delivery, while Manitoba and Ontario allow the leave to commence 17 weeks prior to that date. Special provisions sometimes apply in cases where there is a premature birth or an abortion. Some jurisdictions provide parental leave as well: the Canada Labour Code provides, in addition to the 17 weeks of maternity leave, another 24 weeks of unpaid child care leave. Ontario provides 18 weeks of unpaid parental leave to each parent who has worked for the same employer for 13 weeks or more, while Québec allows parents up to 34 weeks of unpaid parental leave, to be shared between the parents. No qualification period is required. Parents in Manitoba have a right to 17 weeks of unpaid parental leave, provided 12 consecutive months of employment have been completed with the same employer.

Generally, an employer can require an employee to begin her leave where the pregnancy interferes with the performance of her duties. Often, this right is subject to the authorization of the Director of Employment Standards.

An employee is usually entitled to be reinstated in the same position, or in a comparable one, at not less than the same wages and benefits accrued prior to the leave. Some jurisdictions also provide that the employee is entitled to all increments of wages and the benefits to which she would have been entitled had the leave not been taken. If an employer suspends or discontinues operations during the maternity leave, he or she is often required, on resumption of operations and subject to any seniority system contained in a collective agreement, to reinstate the employee in accordance with the above.

It is normally prohibited to terminate the employment of an employee, or change a condition of employment without their written consent, because of the pregnancy or of a request for maternity leave. This protection extends to women only during the maternity leave period itself, unless it is clearly provided otherwise.

In addition, Québec provides that a pregnant employee has the right to refuse to perform work that could endanger her or the child she is bearing, or the child she is breast-feeding. She must give her employer a medical certificate and request to work at other tasks. If the request is not granted, the employee may not be required to recommence work until she is either reassigned or the baby is born.

The Canada Labour Code provides child care leave of up to 24 weeks, available to either parent, whether natural or adoptive. In Manitoba (17 weeks per parent), Ontario (18 weeks per parent) and Québec (34 weeks which can be shared between the parents), parental leave is available to adoptive parents as well. Adoption leave of up to five weeks in Nova Scotia, of up to six weeks in Prince Edward Island and Saskatchewan, and of up to 17 weeks in New Brunswick and Newfoundland may be granted to a female employee (or to a male employee in New Brunswick, Newfoundland and Saskatchewan) upon the placement of a child for adoption. A certificate of placement from a child welfare agency must usually be given to the employer. Saskatchewan further provides paternity leave, up to a maximum of six weeks, which can be taken in any combination during the three month period preceding and following the estimated birth of the child. All parents in New Brunswick (natural and adoptive) have a right to seven days unpaid parental leave. In Québec, the law provides that an employee with at least 60 days of uninterrupted service has the right to be absent for five days at the birth or adoption of a child, the first two of which are remunerated.

The Unemployment Insurance Act (as amended), complements these provisions. The new benefits, which came into force on November 18, 1990, provide the following:

- 15 weeks of maternity benefits in the period surrounding the birth of a child;
- 10 weeks of parental benefits, available to natural or adoptive parents, either mother or father, or shared between them as they deem appropriate; and
- 15 weeks of sickness benefits as prescribed by regulation.

Moreover, if a child is six months of age or older at the time of arrival at a claimant's home or actual placement for adoption, and is certified as suffering from a physical, psychological or emotional condition that requires an additional period of care, the 10 weeks referred to above are extended to 15 weeks.

More than one type of benefit can be claimed within the same benefit period, up to a cumulative maximum of 30 weeks. In addition, claimants can receive parental benefits in combination with regular benefits, but the total cannot exceed 30 weeks or the maximum regular benefit entitlement, if it is greater.

In addition, the Act provides that the mother of a prematurely born child can interrupt her maternity benefits for the period during which the child must remain hospitalized, in order that those benefits be resumed once the child arrives home.

13. MATERNITY PROTECTION AND PARENTAL LEAVE

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
Federal CanadaLabour Code	If confinement occurs on or before date specified in certificate: 17 weeks. If confinement occurs after the date specified in certificate: 17 weeks + period equal to the period between date specified in certificate and actual date of delivery. Leave may commence no earlier than 11 weeks before expected date of birth and must end no later than 17 weeks following actual date of birth. An additional 24 weeks of child care leave is available to either parent, whether natural or adoptive.	Six months of continuous service; application four weeks before commencement of leave or to change the length of the leave; medical certificate.	Work, undertaking or business of a local or private nature in Yukon or Northwest Territories.	No dismissal, suspension, lay off, demotion or other disciplinary measure because of pregnancy or application for leave. Employee's pregnancy or intention to take child care leave not to be taken into account in any decision regarding training or promotion. Reinstatement in same position or comparable one with not less than same wages and benefits and in the same location as the previous position. Employee has the right to receive employment information during his/her absence.	Pension, health and disability benefits and seniority continue to accrue during the entire period of leave, if the employee so chooses. However, if a monetary contribution is required of the employee with regard to a benefit and he or she fails to pay it within a reasonable time, pre- and post-leave employment is deemed continuous for the purpose of calculating the pension, health and disability benefits. Employment deemed continuous where business transferred from one employer to another. The 24 weeks child care leave may be used as adoption or paternity leave. The leave is available to either parent and may be shared by both in such a way as the aggregate period of leave totals no more than 24 weeks.

13. MATERNITY PROTECTION AND PARENTAL LEAVE (continued)

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
Alberta Employment Standards Code; Individual's Rights Protection Act	18 weeks Pre-natal: 12 weeks Post-natal: at least six weeks; three weeks longer where recommended in medical certificate.	One year of continuous service; notice two weeks before commencement of leave; medical certificate, if required by the employer.	Farm labourers, domestic servants, municipal police and public employees.	An employer cannot terminate or lay off an employee who has commenced maternity leave. Reinstatement in same position or comparable one with not less than same wages and benefits. Employee must give two weeks' notice of date of resumption of employment. An employer cannot refuse to continue to employ an employee or discriminate against her in any term or condition of employment for the only reason that she is pregnant.	Employer may require employee to commence maternity leave (within the entitled period of leave) where pregnancy interferes with performance of duties. Adoption leave of up to eight weeks is available to either parent upon the adoption of a child under three years of age. An adoptive parent is entitled to the leave if he or she has completed one year of continuous service and has submitted written notice of leave.
British Columbia Employment Standards Act and Regulation	18 weeks Pre-natal: 11 weeks Post-natal: six weeks up to six weeks longer where recommended in medical certificate.	Must make a written request for the leave supported by a medical certificate	Specified professionals; certain categories of salespersons; students in certain approved work programs; students employed at school where they are	No notice or dismissal because of authorized leave or reasons arising out of it. Onus of proof on employer. Reinstatement in same position or in comparable one with all increments of wages and benefits to	Pre- and post- leave employment deemed continuous for pensions and other benefits. Employer may require employee to commence maternity leave (within the entitled period of leave) where pregnancy interferes with performance of duties. If employer suspends or

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
British Columbia (continued)			enrolled; persons employed in a private residence solely to attend to a child, a disabled, infirm or other person; persons receiving income assistance while participating in an employment program; artists, musicians, performers or actors; student nurses and disabled employees of a charity receiving therapy or engaged in a therapeutic work program.	which the employee would have been entitled had the leave not been taken.	discontinues operations during employee's leave of absence and operations have not resumed at the time that the leave expires, the employment of that employee is deemed continuous upon resumption of operations.
Manitoba Employment Standards Act	If delivery occurs on or before date specified in certificate: 17 weeks. If delivery occurs after date mentioned in certificate: 17 weeks + period equal to period between date specified in certificate and actual date of delivery.	One year of continuous service; application four weeks before commencement of leave; medical certificate.		Employer may not dismiss or lay off an employee who has completed 12 months of continuous employment solely because of pregnancy or application for leave. Reinstatement	Seniority, pension and other benefits do not accumulate during the period of pregnancy or parental leave. Employment deemed continuous where business transferred. A parental leave of 17 continuous weeks is available to each natural or adoptive parent who has

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
Manitoba (continued)	Leave must commence no earlier than 11 weeks preceding the date specified in the certificate and must terminate no later than 17 weeks following actual date of delivery. Special: (where no application made) with medical certificate that employee is incapable of performing duties because of medical condition arising out of pregnancy: 11 weeks prenatal leave and a further period. Total leave must not exceed 17 weeks.			in same position or comparable one with not less than same wages and benefits.	completed 12 consecutive months of employment with the same employer. An application in writing for parental leave must be submitted at least 4 weeks before the day specified in the application as the day on which the employee intends to commence the leave. This leave may begin no later than the first anniversary date of the birth or adoption of the child or of the date on which the child comes into the actual care and custody of the employee. When an employee intends to take parental leave in addition to maternity leave, the leave must be back to back, unless the employer and the employee otherwise agree or an applicable collective agreement provides otherwise.
New Brunswick Employment Standards Act	17 weeks. Pre-natal leave: up to 11 weeks prior to the estimated date of birth.	Medical certificate; notice of four months of the intention to take the leave; notice of two	Domestics; farm workers.	Employer may not dismiss, suspend or lay off a pregnant employee or refuse to hire a pregnant employee for reasons	Employer may require that an employee begin her leave at any time during the 11 weeks preceding the estimated date of birth if she cannot reasonably perform

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
New Brunswick (continued)		weeks prior to the date from which the leave is to begin, unless there is an emergency.		arising out of the pregnancy alone. The employee must be reinstated in the same position or a comparable one, with not less than the same wages nor loss of seniority or benefits accrued up to the beginning of the leave.	the duties of her position and if no other position is available. Adoption leave of up to 17 weeks for one adopting parent and a leave of up to seven consecutive calendar days for any natural or adoptive parent. In the event of death or serious illness of the mother of a newborn child, the father is entitled to a leave of up to 17 weeks less any period actually used by the mother.
Newfoundland Labour Standards Act	17 weeks. Pre-natal: 11 weeks + period between estimated and actual date of birth. Post-natal: six weeks. Both periods may be reduced by consent and with medical certificate. Both periods may be increased by consent.	One year of continuous service; medical certificate, notification to her employer of the estimated date of birth not later than 15 weeks before the estimated date of birth.	Domestic servants.	No dismissal because leave is taken. In case of dismissal, onus of proof is on employer. Terms of contract of service are resumed so that conditions are not less beneficial.	Pre- and post-leave employment deemed continuous for pensions and other benefits. Adoption leave of up to 17 weeks must be granted to any employee on receipt of a certificate attesting to the adoption.

13. MATERNITY PROTECTION AND PARENTAL LEAVE (continued)

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
Nova Scotia Labour Standards Act	17 weeks. Pre-natal: At any time from 11 weeks before expected delivery. Post-natal: six weeks compulsory; shorter period on opinion of doctor.	One year's service; medical certificate.	Domestic servants in private home, professionals, students engaged in professional training and teachers.	No dismissal because of pregnancy of an employee who is entitled to leave. Reinstatement with no loss of seniority or benefits.	Pre-natal leave is compulsory at any time on request of employer where duties cannot reasonably be performed by pregnant women or performance materially affected by pregnancy. Adoption leave of up to five weeks may be granted to a female employee on receipt of a certificate.
Ontario Employment Standards Act, 1974	17 weeks minimum. In case of early birth, stillbirth or miscarriage, pregnancy leave shall not end until 6 weeks after the birth, stillbirth or miscarriage, if parental leave is not available. Early termination of leave only upon 4 weeks' notice to employer of advanced date of termination.	Employed 13 weeks immediately preceding expected date of delivery; medical certificate with two weeks' written notice. Advance notice requirement is waived in case of early birth, stillbirth, miscarriage or in case of complications caused by the pregnancy. In this case, a medical certificate certifying the condition of the employee, and a	Students in certain approved work programs, inmates of provincial correctional institutions, offenders performing work under court orders.	Dismissal, lay off or disciplining of employee entitled to leave is prohibited. Wages, benefits and seniority accrue during maternity and parental leaves. Reinstatement in same position or at a comparable one if same no longer exits. If operations were suspended during the employee's leave, the employee must be reinstated upon resumption of the operations in accordance with the employer's seniority system or practice.	18 weeks of parental leave per parent (natural or adoptive) provided employee has completed 13 weeks of employment with his or her employer and has given the employer a two week written notice. Must commence within 35 weeks after birth of child or after child comes into care of parent for the first time. If parental leave is taken after pregnancy leave, leaves must be back to back unless child has not yet come into the care of parent for the first time (e.g., if the child has remained in the hospital). Special provisions apply when child comes into care and custody of parent sooner

13. MATERNITY PROTECTION AND PARENTAL LEAVE (continued)

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
Ontario (continued)		notice as to when the pregnancy leave began or is to begin must be given to the employer within two weeks of stopping work.			than expected. A four week notice is required when the leave ends earlier than 18 weeks.
Prince Edward Island Labour Act	17 weeks. Pre-natal: 11 weeks before the estimated date of birth. Post-natal: not less than six weeks after the actual date of birth, or a shorter period if the employee so requests.	Employed for 12 continuous months or more; application at least four weeks before the commencement of leave; medical certificate.	Farm labourers	Employer may not dismiss, lay off or suspend an employee by reason only of the fact that she is pregnant, is temporarily disabled because of pregnancy or has applied for maternity leave. Reinstatement in same position or in a comparable one with not less than the same wages and benefits. The employer is, however, not obliged to pay pension benefits in respect of any period of maternity leave granted to an employee.	The employer may request that an employee begin her leave not more than three months before the estimated date of birth where the pregnancy would unreasonably interfere with the performance of her duties, and the onus of proof is on the employer. Adoption leave of up to six weeks must be granted to a female employee on receipt of a notice from the Director of Child Welfare or from a child welfare agency of the proposed placement of a child six years of age or younger.

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
Québec An Act Respecting Labour Standards and Regulations	18 weeks maximum. The leave may start only as of the beginning of the 16th week preceding the expected date of birth. From the 6th week preceding the expected date of delivery, the employer may require the employee to commence her maternity leave, unless a medical certificate can be provided, indicating that the employee is still fit to work. If birth takes place after the expected date, the leave can be extended by a period equal to the period of delay, but not if the employee still has two weeks post-natal from the original leave. Maternity leave can be extended, upon receipt of a medical certificate, by a period of up to six weeks. Special procedures and periods of leave apply in case of complications during the pregnancy, miscarriage or a stillborn child.	Notice, in writing, three weeks before commencement of leave; medical certificate. Less than three weeks with medical certificate indicating reasons.	Farm employees where no more than three employees are habitually employed; employees employed in a dwelling to care for a child or a disabled, handicapped or aged person, unless work is intended to produce profit for employer; a student employed in a job induction program.	Following maternity or parental leave, the employer must reinstate the employee in his or her former position at the end of a leave not exceeding 12 weeks or in a comparable position (with equal or higher wage) if the leave exceeded 12 weeks. Seniority and benefits accumulate during leave. Employee must give three weeks' notice of date of resumption of employment, if he or she has decided to shorten the leave from the date specified in the original notice. An employee who does not return to work at the end of her maternity leave is presumed to have resigned. Dismissal, suspension or transfer of any employee because of pregnancy is prohibited.	Upon presentation of medical certificate, the employee may request to work at other tasks if the conditions of work are hazardous to her or to the unborn child, or to the child she is breast-feeding. If the request is not granted the employee may cease work immediately without loss of rights or benefits. The employee may not be required to recommence work until either she is reassigned or the delivery has occurred. The parents of a newborn child, or an adopted child which has not yet reached the age of compulsory school attendance, are entitled to 34 weeks parental leave without pay. This leave may be shared between the parents or used by one of them only. Employee must give employer a notice of not less than 3 weeks. An employee may be absent from work for a total of five days at the birth or adoption of a child, the first two of

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
Québec (continued)					which must be with pay if the employee is credited with at least sixty days of uninterrupted service. In addition, an employee may be absent for five days per year, without pay, to take care of his or her minor child, when his or her presence is required due to unforeseen circumstances; and an employee may be absent without pay for medical examinations related to her pregnancy.
Saskatchewan Labour Standards Act	18 weeks. Pre-natal: 12 weeks. Post-natal: six weeks. Shorter period with permission of employer. A further six weeks with medical certificate giving bona fide reasons why employee is unable to return to work. Employer may require that employee commence maternity leave not more than three months before expected date of birth where pregnancy interferes with performance of duties.	One year of continuous service; application four weeks before commencement; medical certificate.	Farming, ranching or market gardening.	No dismissal, lay off, suspension or discrimination solely because of pregnancy or application for leave. Onus of proof is on employer. Reinstatement in same or comparable position with no less than the same wages and benefits, and with no loss of seniority or pension benefits.	14 days notice of intention of resuming work to be given to employer. Upon written application, an employee who has worked continuously for 12 months is entitled to: (a) Paternity leave: six weeks maximum to be taken in any combination during three-month period before or after estimated date of birth.

13. MATERNITY PROTECTION AND PARENTAL LEAVE (continued)

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
Saskatchewan (continued)	Special: (where no application made) total leave: 14 weeks; not less than six weeks after birth.				(b) Adoption leave: six weeks maximum commencing on day child becomes available for adoption. 14 days' notice before returning to work. Reinstatement in same position or comparable with not less than same wages and benefits.
Northwest Territories Labour Standards Act	20 weeks. Extension of up to 6 weeks, by a period equal to the time between the estimated date and the actual date of birth. Extension of up to 6 weeks, for medical reasons, where the employee is unable to return to work for reasons related to the birth. The leave may be shortened, with the consent of the employer.	12 consecutive months of employment with the same employer; written request for leave 4 weeks in advance.	Trappers, persons engaged in commercial fisheries, members and students of certain professions.	No termination or change in conditions of employment because of pregnancy or application for leave. Reinstatement in the same or comparable position with no loss of wages, benefits and seniority accrued, and with all increments to wages and benefits awarded during her absence. If operations have been suspended during leave, the employer cannot refuse to reinstate the employee, at the above conditions, because she has taken the leave, upon resumption of operations.	The Labour Standards Officer may, at the request of the employer, require an employee to commence her leave if, in the officer's opinion, the employee cannot reasonably perform her duties because of the pregnancy.

13. MATERNITY PROTECTION AND PARENTAL LEAVE (continued)

Jurisdiction and Legislation	Period of Leave	Requirements	Exclusions	Job Security	Other
Yukon Employment Standards Act	17 weeks.	12 months of continuous employment; written request for leave at least four weeks in advance; medical certificate.	Sitters; persons receiving supplemental benefits under s.38.1 of the Unemployment Insurance Act, 1971.	No termination or change in the conditions of employment because of leave or because of pregnancy. Reinstatement in the same or comparable position with no less than the wages and benefits accrued. Employee is entitled to increments in wages and benefits awarded during her absence.	Employer may request that an employee begin her leave at any time during the period of six weeks preceding the expected date of delivery or sooner, with the consent of the Director, if the employee cannot reasonably perform her duties because of the pregnancy.

TERMINATION OF EMPLOYMENT

HISTORICAL BACKGROUND

Termination of employment has always constituted an important part of labour law. "Damage actions by salaried employees alleging wrongful dismissal account for the vast majority of reported court decisions dealing with the individual employment relationship."[22]

The statutory provisions of notice of termination of employment take their origins in the breach of contract rules in common law. A person who is employed for an indefinite term, and whose employment is terminated for reasons other than disciplinary, is entitled under common law to a period of reasonable notice prior to termination, or to an amount of pay that he would have received if he had worked for that period. The courts have determined the period of notice that would have reasonably been required on the facts of each case. In doing so, they have considered the nature of the work, the length of service of the employee, age, experience and training and on an assessment of how long a person in the plaintiff's line of work and with the same attributes would need in order to find another suitable job. Employees doing work requiring little skill or responsibility have been considered to be entitled to shorter notices, while professional and managerial employees usually command much longer periods.

The advent of employment standards legislation altered and expanded the protection afforded to blue collar or low-skilled workers. While the statutory notice periods are to be treated as minimal, and do not pre-empt the right to longer reasonable notice periods, they have more relevance for the vast majority of employees than any rights they may have at common law.[23]

For when an employee has been dismissed without notice, and without pay in lieu of notice, he becomes a creditor with a claim for wages against his employer. The employee may, in most jurisdictions, take an ordinary civil action to recover the amount due.

> "To do this he will have to seek out legal advice and wait out the time required to get to trial, to obtain a judgement, and to execute on the judgement, before receiving his money. The costs recovered in a successful action do not cover all the costs of the action, and this usually makes it uneconomical to bring a civil action for amounts not measured in the thousands of dollars."[24]

Because the amounts involved are usually much smaller in the case of an employee with little skill or responsibility, a civil action to recover them is not a practical solution. An action in a small claims court may mitigate some of these difficulties, but there may still be a need for legal advice and the delays to settle the matter still would be lengthy. Above all, the process of execution would be just as cumbersome.

Thus, there exists a particular need for a speedy and inexpensive legal remedy at the disposal of the employee against a defaulting employer. The employment standards legislation now usually provides just this kind of administrative recourse. The acts normally empower employment standards officers to investigate such claims, and attempt to come to an amiable settlement between the parties involved. Failing such a resolution, the director of employment standards can issue a certificate of unpaid wages, and that certificate, once registered with the clerk of the ordinary court of first instance of the province, becomes enforceable as a judgement of that court.

The need for a regulatory process in the case of collective dismissals is of another order. Large scale group terminations create special economic problems in the regions affected and government authorities must be sufficiently warned so they may attempt to alleviate the consequences of mass layoffs and to obtain the co-operation of the parties involved.

In this regard, the federal, Manitoba, Ontario and Québec legislation provide specifically that the employer must co-operate with the Minister of Labour and, under the Canada Labour Code, with Canada Empolyment and Immigration

Commission officials. New Brunswick, Newfoundland, Nova Scotia, the Yukon and the Northwest Territories, the other jurisdictions that have group termination legislation, though they do not specifically require co-operation nevertheless require that notice of the projected layoff be given to the Minister of Labour (or to another government official), presumably to serve a similar purpose. In the federal jurisdiction, in Manitoba and in Québec, employer and employee representatives are normally required to participate in a joint planning committee whose mandate generally is to eliminate the necessity for the termination or minimize its impact on the redundant employees and to assist them in obtaining other employment. The adjustment program prepared by the committee would normally tap into early retirement and work sharing schemes offered through various government programs. Such a committee would also work in close collaboration with CEIC and other governmental officials.

THE PRESENT SITUATION

All Canadian jurisdictions have legislation requiring an employer to give notice to the individual worker whose employment is to be terminated.

In addition, the Parliament of Canada, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, Québec, the Yukon and the Northwest Territories require an emloyer to give advance notice of a projected termination of a large scale layoff to a group of employees.

Individual Terminations

In general, notice of termination is given to workers who have been employed for three months or more. Notice is not required to be given, however, in most jurisdictions, to employees hired for a definite term or task; employees who have been temporarily laid off or dismissed for just cause; those who have refused reasonable alternate work; or those who are employed under a contract that has become impossible to perform or is frustrated by a fortuitous or unforeseeable event. Certain categories of employees, such as brush clearing employees, agricultural workers, domestics, professionals and managerial employees are often excluded from the application of these provisions.

Normally, the legislation provides staged increases in the period of notice of individual termination based on the years of service of the employee. For example, the provisions may require one weeks' notice for an employee who has been employed for three months or more but less than two years; two weeks' notice where employed for two years or more but less than five; four weeks' notice where employed five years or more but less than 10; and eight weeks' notice where employed 10 years or more.

Group Termination

Notice of group termination of employment is usually served to the employees involved, or to the trade union, and to government authorities. The employer and the trade union are often required by the law to cooperate with government to attempt to minimize the impact of the termination and to re-establish redundant employees in other employment. The length of the notice period usually increases with the number of redundant employees involved, and can range from eight weeks to four months.

However, the legislation usually provides a number of technicalities which may affect the calculation of the number of redundant employees and, consequently, may preclude the application of these provisions. For example, an employee may have to have been employed for three months or more to be counted, or not have been employed for a definite term or task. The group of employees often must have been employed in the same establishment (usually defined in terms of regional or local operations), and have been terminated within any period of four weeks.

In the cases of both individual and group termination, the employer may give pay in lieu of notice equivalent to the wages the employee would have received during the period of notice he or she would have been entitled to.

The legislation usually distinguishes between a temporary layoff and a permanent termination. Generally, a layoff not exceeding 13 weeks, or one of more than 13 weeks if the employer has advised that he intends to recall the employees within a specified time as approved by the Director of Employment Standards, is not

deemed to be a termination of employment. Some jurisdictions nevertheless do not make that distinction and require an employer to give a notice in cases of mass layoffs.

Other Related Provisions

The Canada Labour Code also provides for severance pay for employees with 12 months service or more. Ontario has a similar provision covering employees with five years' service or more. In both jurisdictions, severance pay is payable in cases of both group and individual termination of employment.

In addition to termination of employment provisions per se, the laws usually make it illegal to dismiss employees contrary to human rights legislation, or because of pregnancy, trade union activities, participation in proceedings under industrial relations legislation or employment standards legislation, or for garnishment or attachment of wages. To these "illegal dismissal" clauses must be added the "unjust dismissal" clauses found in the labour codes of Nova Scotia, Québec and the Parliament of Canada. Such a provision is...

> "...departure from the status quo, both statutory and at common law, in Canada because, (...), it entitles the employee to reinstatement. It gives a right not just to due notice but to the job; a right similar to that enjoyed by employees governed by collective agreements".[25]

The courts had never before recognized reinstatement as being an accessible remedy for a dismissal without just cause. The only remedy, once the employment relationship had been severed, was appropriate compensation for damages, including the remuneration that would, but for the dismissal, have been earned by the employee. Because of the fact that the unjust dismissal clause creates the right to the job, the employee in Nova Scotia acquires that right only after 10 years of continuous service with the same employer; in Québec, after five years; and under the Canada Labour Code, after one year.

Finally, any portion of unused vacation must be paid upon termination of employment during a working year.

14. NOTICE OF INDIVIDUAL TERMINATION OF EMPLOYMENT

Jurisdiction and Legislation	Notice Required	Application to Employers and Employees	Other Requirements
Federal Canada Labour Code and Regulation	Two weeks	Employers are not required to give notice to employees employed less than three months. Employees are not required to give notice.	A layoff is not deemed to be a termination when: it is the result of a strike or lockout (even when a strike or lockout in another establishment forces an employer to reduce the operations); the layoff is mandatory pursuant to a provision of a collective agreement; it is for a term of three months or less; it is for more than three months but the employee is given notice that he will be recalled within six months of the beginning of the layoff; it is for a term of more than three months but the employee continues to receive payments from his employer, the employer continues to make payments to a pension benefits plan or a group or employee insurance plan, the employee receives supplementary unemployment benefits, or the employee would be entitled to receive the benefits but is disqualified pursuant to the Unemployment Insurance Act, 1971; or the layoff is for a term of more than three months but not more than 12 and the employee maintains recall rights pursuant to a collective agreement. With reference to the three-month periods mentioned above, any period of re-employment of less than two weeks is not to be included. Severance Pay: An employee who has completed 12 consecutive months of employment is entitled to two days' wages in respect of each completed year of employment but not less than five days wages at the regular rate.

14. NOTICE OF INDIVIDUAL TERMINATION OF EMPLOYMENT (continued)

Jurisdiction and Legislation	Notice Required	Application to Employers and Employees	Other Requirements
Alberta Employment Standards Code	a) one week, where employed at least three months but less than two years; b) two weeks, where two years or more but less than four; c) four weeks, where four years or more but less than six; d) five weeks, where six years or more but less than eight; e) six weeks, where eight years or more but less than ten; f) eight weeks, where ten years or more.	Employers are not required to give notice to: seasonal employees; construction workers other than office employees at the site; employees employed for a definite term or task for a period not exceeding 12 months; to employees temporarily laid off; terminated for just cause; laid off after having refused reasonable alternate employment; to employees who refused work made available through a seniority system; laid off as the result of a strike or lockout; who do not return to work within seven days of a recall; employed under an arrangement whereby they may elect to work or not when requested to do so, or to employees whose contract of employment has become impossible to perform because of an unforeseeable or unpreventable cause; etc. Employees are required to give up to two weeks' notice when leaving their job.	The employer must give the notice, the pay in lieu of notice, or a combination of pay and notice. A layoff is deemed temporary when: it is of less than 60 days; or it is of 60 days or more but the employee receives payments from the employer, or the employer makes payments for the benefit of the employee to a pension plan or an employee insurance plan or the like.

14. NOTICE OF INDIVIDUAL TERMINATION OF EMPLOYMENT (continued)

Jurisdiction and Legislation	Notice Required	Application to Employers and Employees	Other Requirements
British Columbia Employment Standards Act and Regulations	Where employed at least six consecutive months: two weeks. After three consecutive years, three weeks. Thereafter, one additional week for each additional year of employment up to a maximum of eight weeks.	Employers are not required to give notice to persons employed for a definite term not exceeding 12 months, B.C. Railway Company employees, construction workers, professionals, certain salesmen, students in certain approved work programs, students employed at the school where they are enrolled, persons employed in a private residence solely to attend to a child, persons receiving income assistance while participating in an employment program, artists, musicians, performers or actors, student nurses, disabled employees of a charity receiving therapy or engaged in a therapeutic work program No notice is required where an employee is discharged for just cause; is employed under an arrangement whereby he may elect to work or not when requested to do so; is employed for a definite term or task; has refused reasonable alternate employment; or where the contract of employment has become impossible to perform due to an unforeseeable event or circumstance; etc. Employees are not required to give notice	A layoff is deemed temporary when: it does not exceed 13 weeks in a period of 20 consecutive weeks, or it exceeds 13 weeks but the employee is recalled within a time fixed by the director of employment standards. For a week to count, the employee must have earned less than 50% his normal weekly wage averaged over the previous eight weeks.

14. NOTICE OF INDIVIDUAL TERMINATION OF EMPLOYMENT (continued)

Jurisdiction and Legislation	Notice Required	Application to Employers and Employees	Other Requirements
Manitoba Employment Standards Act	Where employed for more than two weeks: one pay period.	Employers are not required to give notice to professionals and students in professional training, domestic and agricultural workers, persons employed in fishing, fur farming, dairy farming and in rehabilitation or therapeutic employment. No notice is required where the termination is for just cause or where an employee was employed for a definite term or task, etc. Employees who are entitled to receive notice of termination are required to give notice.	A layoff is not deemed a termination when: it is customary, during that period of year, to lay off employees because of the seasonal nature of the industry and the employee has been advised, upon being hired, that there may be lay offs; it is for a term of eight weeks or less in any period of 16 consecutive weeks; or it is for more than eight weeks and the employer recalls the employee within the time specified by the minister or the employee continues to receive payments from the employer or the employer continues to make payments for the benefit of the employee to a pension plan or an insurance plan.
New Brunswick Employment Standards Act	Where employed at least six months but less than five years: two weeks. Where employed five years or more: four weeks.	A notice is not required where: a lay off is due to a lack of work unforeseen by the employer; a layoff is the result of the normal seasonal reduction, closure or suspension of an operation; a definite term or task has been completed; a lay off occurs in the construction industry; an employee retires upon reaching a certain age under a retirement plan; or where an employee has refused reasonable alternate work offered by an employer as an alternative to being laid off or terminated. Employees are not required to give notice.	A lay off for a period of up to six days is not deemed to be a termination. If an employee continues to be employed for one month or more after notice has been given, the notice becomes extinguished and a new one is required if the employee is to be laid off or terminated.

14. NOTICE OF INDIVIDUAL TERMINATION OF EMPLOYMENT (continued)

Jurisdiction and Legislation	Notice Required	Application to Employers and Employees	Other Requirements
Newfoundland Labour Standards Act	Where employed at least one month but less than two years: one week. Where employed two years or more: two weeks.	Employers of employees in the construction industry or in certain professions are not required to give notice. Construction industry and professional employees are not required to give notice.	A layoff for a period of one week or less is not deemed a termination.
Nova Scotia Labour Standards Code	Where employed, less than two years: one week. Where employed two years or more but less than five years: two weeks. Where employed more than five years but less than ten years: four weeks. Where employed ten years or more: eight weeks.	Employers are not required to give notice to employees employed less than three months, teachers, construction workers, domestic workers, professionals or students in professional training, salesmen, agricultural workers, persons employed on fishing vessels. No notice is required where: employed for a definite term or task; laid off or suspended for a period not exceeding six consecutive days; laid off due to any reason beyond the control of the employer; or refused reasonable alternate employment; etc. Employees who are entitled to receive notice of termination are required to give notice.	A layoff or suspension of six consecutive days or less is not deemed a termination.

14. NOTICE OF INDIVIDUAL TERMINATION OF EMPLOYMENT (continued)

Jurisdiction and Legislation	Notice Required	Application to Employers and Employees	Other Requirements
Ontario Employment Standards Act	Where employed less than one year: one week. Where employed one year or more but less than three: two weeks. Where employed three years or more but less than four: three weeks. Where employed four years or more but less than five: four weeks. Where employed five years or more but less than six: five weeks. Where employed six years or more but less than seven: six weeks. Where employed seven years or more but less than eight: seven weeks. Where employed eight years or more: eight weeks.	Employers are not required to give notice to employees employed less than three months, certain employees in the shipbuilding industry, or to employees employed for a definite term or task, temporarily laid off, or guilty of wilful misconduct or disobedience or wilful neglect of duty that has not been condoned by the employer; etc. Employers are not required to give notice where a contract of employment has become impossible to perform or is frustrated by a fortuitous or unforeseeable event or circumstance.	A layoff is not deemed a termination when: it is for not more than 13 weeks; or it is for more than 13 weeks but the employee continues to receive payments from the employer, the employer continues to make payments for the benefit of the employee's retirement savings or pension plan or insurance plan, or the employee is entitled to supplementary unemployment insurance but does not receive it because he is employed elsewhere during the layoff; it is for more than 13 weeks but the employee is recalled within the time fixed by the director of employment standards. For a week to count, the employee must have earned less than 50% his normal wages during that week. Severance Pay: Any employee having accumulated five years of service or more who is terminated by an employer having an annual payroll of $2.5 million or more is entitled to one week's regular wages (exclusive of overtime) in respect of each year of employment to a maximum of 26. Severance pay must reflect credit for partial years of employment. Employees fired for misconduct are not entitled to severance pay. Employees who quit after receiving notice retain their right to severance pay provided they give their employer at least two weeks' notice. The director of employment standards may approve payment of severance pay by installments. Unions may make settlements regarding severance pay claims on behalf of their members.

14. NOTICE OF INDIVIDUAL TERMINATION OF EMPLOYMENT (continued)

Jurisdiction and Legislation	Notice Required	Application to Employers and Employees	Other Requirements
Prince Edward Island Labour Act	Where employed for more than three months: one week.	Employers are not required to give notice to farm labourers, employees of tourist establishments operating less than six months in any year, students employed between May and October, persons employed in the construction of roads, streets, sewers, pipelines, tunnels, bridges, and other such works. Employees who are entitled to notice of termination must give notice.	
Québec Civil Code Labour Standards Act	Under the Civil Code: Where an employee is employed by the week: one week. Where an employee is employed by the month: two weeks. Where an employee is employed by the year: one month. Under the Labour Standards Act, which applies notwithstanding the Civil Code:	The Civil Code applies to employers of all employees not covered by the Labour Standards Act. The notice period required of employers by the Labour Standards Act does not apply to certain	

14. NOTICE OF INDIVIDUAL TERMINATION OF EMPLOYMENT (continued)

Jurisdiction and Legislation	Notice Required	Application to Employers and Employees	Other Requirements
Québec (continued)	Where an employee has been employed for at least three months and less than one year: one week. Where an employee has been employed for at least one year and less than five years: two weeks. Where an employee has been employed for at least five years and less than ten years: four weeks. Where an employee has been employed for at least ten years: eight weeks.	agricultural workers, employees whose main duty is the care of a child or a disabled, aged or handicapped person if the work does not serve to procure a profit to the employer, workers in the construction industry, students enrolled in job initiation programs, certain contract workers; executive officers; etc. All employees are required to give the notice set out in the Code. The Labour Standards Act does not require employees to give notice.	
Saskatchewan Labour Standards Act	Where employed for at least three months and less than one year: one week. Where employed for at least one year and less than three years: two weeks. Where employed for at least three years and less than five years: four weeks. Where employed for at least five years and less than ten years: six weeks. Where employed for at least ten years: eight weeks.	Employers are not required to give notice to employees employed in farming, ranching or market gardening, domestic workers or handicapped employees of sheltered workshops and work activity centres, etc. Employees are not required to give notice.	

14. NOTICE OF INDIVIDUAL TERMINATION OF EMPLOYMENT (continued)

Jurisdiction and Legislation	Notice Required	Application to Employers and Employees	Other Requirements
Yukon Employment Standards Act	Where employed for at least six consecutive months: one week.	Employers are not required to give notice to employees in the construction industry; employed in a seasonal or intermittent undertaking that operates for less than six months in a year; discharged for just cause; an employee whose employer has failed to abide by the terms of the employment contract; on temporary lay off; employed under a contract that has become impossible to perform due to an unforeseeable event or circumstance; who have refused reasonable alternative employment offered by their employer. These provisions also do not apply to employees represented by a trade union for the purpose of bargaining collectively. An employee cannot terminate his employment without giving the same notice (or pay in lieu of notice, in certain circumstances) to the employer.	A layoff is not deemed to be a termination when: it is for a period not exceeding 13 weeks in a period of 20 consecutive weeks; or it is for more than 13 weeks, but the employer recalls the employee to work within a time fixed by the director of employment standards. Where the employer terminates or lays off an employee who has been employed at a remote site, the employer must provide free transportation to the nearest point at which regularly scheduled transportation services are available.
Northwest Territories Labour Standards Act	Where employed for 90 days or more, but less than three years: two weeks. One additional week for each additional year of employment, to a maximum of eight weeks.	These provisions do not apply to an employee: who is temporarily laid off; who is employed in the construction industry, for a definite term or task not exceeding 365 days, for less than 25 hours a week, or for less than 180 days in a year; whose employment is terminated for just cause; who has refused reasonable alternative work; or who does not return to work after being requested to do so.	A layoff is not deemed a termination when: it does not exceed 45 days in a period of 60 days; it exceeds 45 days, but the employer recalls the employee to work within a time fixed by the labour standards officer.

15. NOTICE OF GROUP TERMINATION OF EMPLOYMENT*

Jurisdiction and Legislation	Number of Employees	Notice Required	Copy of Notice To	Other Requirements
Federal Canada Labour Code and Canada Labour Standards Regulations	50 or more	16 weeks Notice in writing is given to Minister of Labour	1. Minister of Labour 2. Minister of Employment and Immigration 3. CEIC 4. Trade union recognized to represent the employees as bargaining agent, or any employee not represented by a trade union, or notice posted by the employer in a conspicuous place of the industrial establishment.	Employer must co-operate with CEIC to facilitate re-establishment in employment. Employer must establish a Joint Planning Committee to develop an adjustment program in order to minimize the impact of termination and assist employees in obtaining other employment. The Committee is composed of an equal number of employee and employer representatives. An arbitrator may be appointed to help the Committee develop such a program and to resolve any contested matter. A layoff is not deemed to be a termination when: it is the result of a strike or lockout (even one in another establishment if it forces the employer to reduce his operations); the layoff is mandatory pursuant to a provision of a collective agreement; it is for a term of three months or less; it is for more than three months but the employee is given notice that he will be recalled within six months of the beginning of the layoff; it is for more than three months but the employee continues to receive payments from the employer, the employer continues to make payments to a pension or an insurance plan, the employee receives supplementary unemployment benefits or would normally be entitled to them but is disqualified pursuant to the Unemployment Insurance Act, 1971; or the layoff is for more than three months

* Alberta, British Columbia, Prince Edward Island and Saskatchewan have no provisions regarding notice of group termination. Many of the same exclusions mentioned in Chart 14 apply. Please refer to the appropriate Act or Regulation for a complete list of exclusions or exceptions.

15. NOTICE OF GROUP TERMINATION OF EMPLOYMENT (continued)

Jurisdiction and Legislation	Number of Employees	Notice Required	Copy of Notice To	Other Requirements
Federal (continued)				but not more than 12 and the employee maintains recall rights pursuant to a collective agreement. With reference to the three-month periods mentioned above, any period of re-employment of less than two weeks is not to be included. Severance Pay: An employee who has completed 12 consecutive months of employment is entitled to: two days' wages in respect of each completed year of employment but not less than five days' wages at the regular rate.
Manitoba Employment Standards Act	50-100 101-300 over 300	10 weeks 14 weeks 18 weeks Notice in writing to Minister of Labour	1. Minister of Labour 2. Any trade union certified to represent the employees, or recognized by the employer as bargaining agent 3. Individual employees not represented by a union or notice posted by the employer in a conspicuous place in the establishment.	Notice must mention the reasons for the termination as well as the names of not less than two persons who may be appointed to a Joint Planning Committee to represent the employer. The Minister may require the establishment of such a committee, composed of at least two representatives of the employer and two of the trade union or employees, to develop an adjustment program in order to minimize the impact of the termination and to assist the redundant employees in obtaining other employment. After notice is given, employer may not change conditions of employment or wage rates except with written consent

15. NOTICE OF GROUP TERMINATION OF EMPLOYMENT (continued)

Jurisdiction and Legislation	Number of Employees	Notice Required	Copy of Notice To	Other Requirements
Manitoba (continued)				of employees or if a collective collective agreement authorizes the change. Employee who wishes to terminate employment before expiry of notice must notify the employer in writing. A layoff is not deemed a termination when: it is customary, during that period of year, to layoff employees because of the seasonal nature of the industry and the employee has been advised, upon being hired, that there may be a layoff; it is for a term of eight weeks or less in any period of 16 consecutive weeks; or it is for more than eight weeks and the employer recalls the employee within the time specified by the Minister or the employee continues to receive payments from the employer or the employer continues to make payments to the employee's pension or insurance plan.
New Brunswick Employment Standards Act	10 or more if they represent at least 25% of the employer's workforce.	Six weeks. Notice in writing to the bargaining agent and to the Ministry of Labour and Manpower.	Copy of notice must be posted for the information of all employees.	A notice is not required where: the termination is the result of the completion of a definite term or task; an employee retires under a bona-fide retirement plan; a layoff occurs in the construction industry or the termination results from the normal seasonal reduction, closure or suspension of an operation. A notice is also not required where there is a lack of work due to an unforeseen reason, nor for a layoff for a period of up to six days.

15. NOTICE OF GROUP TERMINATION OF EMPLOYMENT (continued)

Jurisdiction and Legislation	Number of Employees	Notice Required	Copy of Notice To	Other Requirements
Newfoundland Labour Standards Act	50-199 200-499 500 or more	eight weeks 12 weeks 16 weeks Notice in writing to each employee whose employment is to be terminated.	Minister of Labour and Manpower must be notified and informed of the reasons for termination.	Where an employer fails to give the required notice to individual employees and to the Minister within the time prescribed, no action may be taken by the employer to terminate the employees. A layoff for a period not exceeding one week is not deemed a termination. A layoff is not deemed a termination when it is for not more than 13 weeks in any period of 20 consecutive weeks. Such a layoff would be deemed temporary and, instead of the group notice, employees affected would be entitled to the individual notice of termination.
Nova Scotia Labour Standards Code	10-99 100-299 300 or more	eight weeks 12 weeks 16 weeks Notice in writing to each person whose employment is to be terminated.	Minister of Labour must be informed in writing of any notice given.	After the notice is given, the employer may not alter the rates of wages or other conditions of employment of persons to whom notice has been given. A layoff or suspension of six consecutive days or less is not deemed a termination.
Ontario Termination of Employment Regulation under the Employment Standards Act	50-199 200-499 500 or more	eight weeks 12 weeks 16 weeks Notice in writing to each person whose employment is to be terminated.	The employer must notify the Minister of Labour in writing. Minister must be provided with information about: the economic circumstances surrounding the intended terminations; the consultations which have taken place or are proposed	Where bumping is permitted by the terms of employment, the employer may post a notice in a conspicuous place listing the persons to be terminated, their seniority and job description and setting forth the date of termination. The posting of the notice is considered a notice of termination as of the day it is posted.

15. NOTICE OF GROUP TERMINATION OF EMPLOYMENT (continued)

Jurisdiction and Legislation	Number of Employees	Notice Required	Copy of Notice To	Other Requirements
Ontario (continued)		Employees who are entitled to receive a notice of termination, when fifty or more employees are terminated by an employer at the same establishment, must give one week's notice if employed less than two years; or two weeks' notice if employed two years or more if they wish to end their employment before the period of notice they have received is over.	to take place with local communities or with the affected employees or their agent; the proposed adjustment measures and the number of employees expected to benefit from each; and a statistical profile of the employees affected.	A layoff is not deemed a termination when: it is for not more than 13 weeks; or it is for more than 13 weeks but the employee continues to receive payments from the employer, the employer continues to make payments to the employees' retirement savings or pension plan or insurance plan, or the employee would be entitled to supplementary unemployment insurance but is disqualified because employed elsewhere during the layoff; it is for more than 13 weeks but the employee is recalled within the time fixed by the director of employment standards. For a week to count, the employee must have earned less than 50% of his normal wages during that week. Severance Pay: Where: a) 50 employees or more are terminated within six months or less and the terminations are caused by the permanent discontinuance of all or part of the business of the employer at an establishment (including a location which is part of a group of related companies); or b) when a certain number of employees (which in case of group termination must be 50 or more) have their employment terminated by an employer with an annual

15. NOTICE OF GROUP TERMINATION OF EMPLOYMENT (continued)

Jurisdiction and Legislation	Number of Employees	Notice Required	Copy of Notice To	Other Requirements
Ontario (continued)				payroll of $2.5 million or more (if the termination is not a permanent discontinuance referred to under paragraph a) above), the employer must pay severance pay to each employee who has accumulated five years of service or more. The employee is entitled to one week's regular wages (exclusive of overtime) in respect of each year of service, plus credit for each completed month of service, to a maximum of 26 weeks.
Québec Manpower Vocational Training and Qualification Act and Regulation	10-99 100-299 300 or more	two months three months four months to the Minister of Manpower and Income Security	The notice must be posted at the Manpower Branch.	Upon request of the Minister, an employer must immediately take part in the establishment of a committee on reclassification of employees. The committee must consist of an equal number of employer and employee representatives. No employer shall make a collective dismissal during the delay which follows the notice.
Yukon	25-49 50-99 100-299 300 or more	four weeks eight weeks 12 weeks 16 weeks to the Director of Employment Standards		Group notice is in addition to any individual notice required. Four weeks notice to the Director is required where an employer, within any period of four weeks, places a group of 50 or more employees on temporary layoff. A layoff is temporary if it is for not more than 13 weeks in a period of 20 consecutive weeks, or for more than 13 weeks where the employer recalls the employees to his service within a time fixed by the Director. Where

15. NOTICE OF GROUP TERMINATION OF EMPLOYMENT (continued)

Jurisdiction and Legislation	Number of Employees	Notice Required	Copy of Notice To	Other Requirements
Yukon (continued)				an employer terminates the employment or lays off an employee who has been employed at a remote site, the employer must provide free transportation to the nearest point at which regularly scheduled transportation services are available.
Northwest Territories Employment Standards Act	25-49 50-99 100-299 300 or more	four weeks eight weeks 12 weeks 16 weeks Notice in writing to the labour standards officer		A layoff is not deemed a termination when: it does not exceed 45 days in a period of 60 days; it exceeds 45 days, but the employer recalls the employees to work within a time fixed by the labour standards officer.

RECOVERY OF UNPAID WAGES

In dealing with employment standards, the employees' rights and the employers' obligations can almost always be translated in terms of money. The minimum obligations imposed on employers by labour standards legislation are most often payment obligations: minimum wages, overtime pay, vacation pay, general holiday pay, termination pay, etc. These minimum payment obligations are accompanied by other measures destined to protect the employees' most important right: the right to be paid.

HISTORICAL BACKGROUND

The employment relationship being basically a contractual one, the traditional remedy for unpaid employees is to obtain payment through a civil action, as that of a creditor claiming before the courts payment of a debt previously contracted by a defaulting debtor. The pay claim, however, puts the employee in a very different situation than other creditors. Wages are normally the employees' major, if not only, source of income. Nor do employees, especially non-unionized employees, usually have the economic bargaining power to compel the employer to give them any more consideration than the law requires. In addition, several problems have arisen over time that make the exercise of civil recourse impractical. As noted before, to exercise the civil action, the employees would have to seek legal advice and wait out the time required to get to trial, obtain a judgment and execute on the judgment before receiving any money. The costs involved are often too high given the amount recovered, and it is usually uneconomical to institute an action for amounts not measured in the thousands of dollars. For these reasons, employees have a particular need for a speedy and inexpensive legal remedy against a defaulting employer.[26] The legislators have thus provided various mechanisms to ensure that employers would generally respect their obligation, requiring, for example: the prompt payment of wages at regular intervals; establishing a statutory recourse for the recovery of unpaid wages; imposing specific obligations on third parties who become associated with the employer; and creating a high priority for employees' wage claims.

The ordinary rules of common law have been somewhat disrupted by the advent of employment standards legislation. For example, the courts have had to decide whether the existence of a statutory recourse precluded access to a civil action. The answer to such a question can almost always be found in the legislation itself. If a provision of an act respecting employment standards specifically excludes the civil action, or where its access is expressly preserved, there is no problem of interpretation. Problems arise where the provision is not clear in both its extent and intent, or where such a provision is entirely absent from the statute.

Problems of this kind have now largely been solved by the courts and by the legislators. No Canadian jurisdiction precludes access to the civil action. In Prince Edward Island, access to the civil action is neither preserved nor excluded by the Labour Act. However, because the legislation provides a clear and definite recourse, the civil action is not available for the enforcement of the statutory obligations until the statutory recourse has been exercised to its full extent.[27] In other jurisdictions, where access to both the statutory recourse and the civil action is preserved, the civil action and the statutory remedy are alternative means of recovering unpaid wages or enforcing statutory obligations. As such, these alternatives would be, under most circumstances, mutually exclusive. Moreover, where the statutory recourse is limited to a certain amount ($4 000 in Ontario, $2 000 in Prince Edward Island or twice the minimum wage the employee would have earned during the period the employee was not paid in Québec), the civil action becomes complementary to the statutory recourse. The employees retain the right to exercise the recourse before the civil courts for that part of the claim for wages which exceeds the limit of the statutory recourse.

A second question is frequently asked by the courts. It has a bearing on the interaction of the two recourses: to what extent may the statutory recourse be used to recover the full amount of a wage claim? Does the statutory obligation to pay wages

cover only the minimum wage and other minimum payment obligations, or can the claim include all wages due and owing? The answer lies in the statutes as well, and all jurisdictions have defined wages to mean not only the minimum wages, but all wages, including salaries, pay, commission, and any compensation for labour or personal services. This would generally include overtime, vacation pay, general holiday pay, termination pay and other statutory payment obligations. However, the jurisdictions that have created a deemed trust for vacation pay exclude it from the definition because deemed trusts have their own effective protection mechanisms. Moreover, the federal jurisdiction, British Columbia, Ontario, Prince Edward Island, the Northwest Territories and the Yukon also exclude tips and gratuities, whereas Alberta excludes most statutory payment obligations other than wages. Consequently, the statute must be checked to find whether the statutory recourse is available for the recovery of all wages due and owing, or whether it is somehow limited.

THE PRESENT SITUATION

The Basic Recovery Scheme

The Basic Recovery Scheme generally provides that where a complaint is made to the employment standards branch that an employer has failed or refused to pay wages, an investigation is made. This is provided the complaint was lodged within the specified limitation period, which is normally one year. If an officer is satisfied that wages are owed and that no other proceeding has been started and continued, the officer may try to arrange payment directly to the employee. If unable to resolve the matter amiably, the officer may issue an order of non-payment. If the order is contested, a request for review may be submitted to the director, within a specified time, normally two weeks. If it is not, payment usually must be made in trust to the Director of Employment Standards, on behalf of the claimant. Further appeal is sometimes allowed to an umpire, a board or a tribunal. Some jurisdictions require that the employer deposit with the director a specified amount of money, usually representing a certain portion of the claim, until the appeal has been determined. This amount would be applied to the claim if the appeal is rejected or only partially upheld. The order of the umpire, the board or the tribunal is final and binding, and may only be further appealed on a question of law or jurisdiction, but not on a question of fact. This further avenue of appeal usually lies with the Court of the Queen's Bench (or its equivalent) or with the Appeal Division of that court.

Once all delays for appeal have expired, or after an appeal has failed, the Director may issue a certificate stating the amount of wages due and owing. If the amount remains unpaid, the certificate may be filed with the clerk of the Court of the Queen's Bench (or its equivalent), and thus becomes enforceable as a judgment of that court. All provisions of civil procedure relating to the execution of judgments become applicable. For example, the amount of the wage claim may be realized through the seizure of assets and their judicial sale.

There are, of course, many variations to this basic recovery scheme throughout Canadian jurisdictions. For example, the Canada Labour Code provides for the amiable settlement of complaints with the intervention of an inspector, but does not include the stronger provisions normally found in provincial legislation. These provisions mean that employers can be ordered to pay and certificates can be filed and enforced as judgments of the Court. In addition, the extent to which investigations are made or hearings provided may vary from one jurisdiction to another. The power to file certificates and execute upon them may reside with the director, or with the employee, depending on the province, and may also vary in scope.

Prosecutions

> "Every Canadian jurisdiction provides, in some form, that the employer may be prosecuted and convicted for failing to pay an employee as the employee's pay entitlement becomes due".[28]

An employer who does not meet the minimum standards set out in the legislation is in breach of statute, guilty of an offence and liable upon summary conviction to a fine (ranging up to $10 000) or to imprisonment for a specified term (up to one year), or to both. In most jurisdictions - federal, Alberta, Manitoba, Newfoundland, Ontario, Prince Edward Island, Saskatchewan, and the Yukon - the convicting court must order, in addition to any other penalty it may impose, the employer to pay the employee arrears of

wages and other minimum amounts required. Two other jurisdictions, New Brunswick and the Northwest Territories, leave this to the court's discretion. The decision to prosecute in accordance with these provisions usually lies with the Attorney-General or his or her substitute. In certain cases, the Minister of Labour must also authorize, in writing, the prosecution.

Third Party Demands

Third Party Demands or the Attachment of Third Party Debts are an alternative method offered under most employment standards acts for recovering unpaid wages. This consists of intercepting debts owed to the defaulting employer in the hands of third parties (debtors of the employer) in order to pay the wages earned by the employees. The Director of Employment Standards is habitually empowered to issue a demand and serve it to a person who is or is about to become indebted to the employer, or is about to pay a sum of money to the employer. The demand must normally be specific with regard to the amount owed or likely to be owed to the employer by the third party. The demand then constitutes a debt owed by the third party to the director, recoverable by civil action. Such a debt is discharged when the third party pays the sum required to the director, when the director's demand is revoked or when the employer pays his employees in accordance with the demand.

When the money is received from the third party, notice is normally given for the director to proceed, on expiry of the limitation period for the employer to lodge an appeal, to apply the amounts received to the amounts claimed as unpaid wages any balance remaining to be remitted to the employer.

Alberta, British Columbia, New Brunswick, Nova Scotia, Ontario, Prince Edward Island, Saskatchewan, the Northwest Territories, and the Yukon offer such provisions in their employment standards legislation.

Priorities, Preferences, Secured Charges

Generally, Canadian jurisdictions establish through their employment standards legislation a higher priority for claims for wages than the claims of most of the employer's other creditors. These provisions may cover the full amount of wages due and owing, or be limited to a specified amount. These types of provisions usually provide two things. They create a first priority for wage claims over the claims and rights of a) preferred, ordinary or general creditors, b) the Crown or an agent of the Crown, and c) any other person having a claim against the employer. Second, they establish that an order of non-payment, in addition to being filed in the Court of the Queen's Bench, may also be registered in a land titles office against real property of the employer, a central registry used to record any chattel mortgages against the employer's personal property, or the office of the Registrar of Corporations. Note that it is usually the director's prerogative to register copies of the order in this manner, and not the wage-earner's.

Such a registration creates a secured charge in favour of the director, on behalf of the employee, on the real or personal property of the employer for the amount of the claim as set out in the order, or for an amount not exceeding any limit fixed by legislation.

The wages secured in such a manner have priority over any other claim or right, secured or unsecured, that is registered, or duly made, <u>after</u> the date this secured charge is created.

These sort of provisions are a valid exercise of the provinces' exclusive jurisdiction over the regulation of "power of sale" and foreclosure. Although the first priority usually establishes the preferred status of the wage-earner's claim over all other creditors, except secured ones (i.e., holders of a mortgage, a debenture, a perfected money security interest, etc.), it isn't quite as powerful as the secured claim. In the normal scheme of collocation, rights bearing upon real property take the following order: first, all secured charges according to their date of registration, second, all preferred claims according to the priority given to them by statute, and third, all ordinary and general creditors. The secured charge makes the claim for wages rank one level higher and ensures that only other secured charges duly established before it would take precedence. Thus, the employees' capacity to recover their unpaid wages would be somewhat enhanced, in accordance with the ranking assigned to their claim.

Bankruptcies and Insolvencies

The types of provisions just described do not apply in cases of bankruptcy, insolvency or

receivership. Jurisdiction over "bankruptcy and insolvency" is conferred to the federal government by virtue of s. 91(21) of the Constitution Act, 1867 and the operation and application of bankruptcy law supersedes that of any statute that infringes upon this jurisdiction. Once an insolvent employer has assigned himself into bankruptcy or been petitioned into it by one or more creditors, employees' pay claims will be subject to the special rules of bankruptcy law.

Under the Bankruptcy Act, employees' claims for wages fall within the scope of s. 136(1)d), which renders to them a limited priority ($500) ranking over most types of unsecured claims but ranking behind secured claims. In most cases, they would be fourth in line of the preferred claims, after the claims for reasonable funeral and testamentary expenses, in the case of a deceased bankrupt, the costs of administration of the bankruptcy, and the Superintendent's two percent levy imposed on the estate. But before any of the preferred claims are paid, those of the secured creditors must be met, and quite often they are settled to the detriment of all other creditors. However, any secured or preferred creditor ranking this way for only a portion of his claim remains an ordinary creditor for the balance due. Thus, employees who are awarded a priority for the first $500 of their claim for wages under s. 136(1)d), rank as ordinary creditors for any portion exceeding that amount.

Trusts for Wages and for Vacation Pay

Under s. 67(a) of the Bankruptcy Act, property held by the bankrupt in trust for any other person is not part of the assets and cannot be included in the mass of property to be shared by the bankrupt's creditors.

Alberta, Manitoba, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan have adopted provisions creating deemed trusts for wages and/or vacation pay which purport to operate within the ambit of s. 67(a) of the Bankruptcy Act. The provisions typically provide that every employer is deemed to hold wages or vacation pay accruing due to an employee in trust. The amount also constitutes a lien, a charge, or a mortgage upon the assets of the employer or his estate and has priority over all claims. The trust exists whether or not the amount is kept separate and apart by the employer. (Only Alberta, Manitoba and Saskatchewan provide deemed trust protection for both wages and vacation pay.)

Although the trusts for vacation pay have been held to be valid, there is still much legal discussion as to the extent of their applicability in situations of bankruptcy and insolvency. In July 1989, the Supreme Court of Canada ruled in Henfry Samson Belair Ltd. that any provincial legislation on the subject of recovery of wages in bankruptcies is invalid in as much as it attempts to circumvent the application of section 136(1)(d) of the Bankruptcy Act. The reader is advised to seek legal counsel with respect to the application of these provisions to any particular situation.

Payment of Wages Fund

Manitoba's Payment of Wages Act provides that, as a last resort, when all reasonable and necessary efforts have been made to collect the unpaid wages and all appropriate procedures under this Act have been utilized, if part or all wages ordered to be paid remain unpaid, the Minister of Finance, on the requisition of the Director of Employment Standards, shall pay out of The Payment of Wages Fund the wages owing. In any calendar year, each employee can thus be paid an amount not exceeding $1 200, notwithstanding the number of claims an employee may have in that year. Where any amount in respect of unpaid wages is paid out of the fund, the director is thereupon vested with all the rights of the employee to take such action or institute any proceedings against the employer in law to recover the amount of unpaid wages so paid. If the director is successful in obtaining repayment from the employer, the amounts recovered, up to the amount previously paid out, must be deposited in the fund. The excess, if any, must be paid to the employee.

Similar provisions, although not in force, exist in Québec (which would apply where an employer has become bankrupt or insolvent).

With respect to workers in the construction industry in Québec, the Act respecting labour relations, vocational training and manpower management in the construction industry and the Construction Decree empower the Québec Construction Commission to establish a special fund to compensate employees in cases of bankruptcy and insolvency. Lost wages, vacation pay, and certain other claims are covered in full. The fund is financed by means of a levy on employers (two cents per hour worked).

Upon reimbursement, the Commission is subrogated in the rights of employees against employers, contractors and subcontractors as well as against directors of companies who are liable for unpaid wages earned during a period not exceeding six months. Recovered amounts become part of the fund.

Other Laws Affecting the Recovery of Wages

Many other types of laws also provide protection for wages. All jurisdictions (except the federal jurisdiction, New Brunswick, Nova Scotia and Prince Edward Island) have a Masters and Servants Act, sometimes called Recovery of Wages Act, which provides a summary proceeding for the recovery of unpaid wages. This sort of act awards to a justice of the peace or to a magistrate exceptional jurisdiction to act as a civil court to settle disputes between employer and employee. Generally, after having received a complaint, the justice or magistrate must summon the employer to a hearing and decide on the matter at that hearing. However, serious limits are imposed on the amount that may be recovered through this action. The amount varies from $50 to $500. In addition, a limitation period of one year or less to institute this action is usually required.

All jurisdictions (with the exception of the Atlantic provinces) provide, generally in an act respecting corporations or in their employment standards legislation, that directors and officers of a corporation are liable for the employees' wages. This type of provision enables employees to "pierce the corporate veil", since the corporation is in itself a separate and distinct legal entity from that of the directors and officers. Without such a provision, the employees' only recourse would be against the corporation. Ordinarily, this sort of provision renders the directors and officers of a corporation jointly and severally liable for unpaid wages. This means that employees may exercise their recourse against any or all of the directors or officers. If an employee chooses to single out one of the directors or officers, the latter must then sue the others to recover from each their share of the claim. However, this recourse is usually limited to the amount of wages that became due during the time these persons were directors or officers of the corporation and only up to a maximum equal to a certain number of months' wages. This number varies from three to 12 months, depending on the particular statute. It is also generally required that the employees have successfully sued the corporation, within the prescribed limitation period, and have had the writ of execution returned unsatisfied in whole or in part. It is not rare to find that many other conditions are imposed to make this right effective.

In common law provinces, several laws create liens. The lien concept is similar to that of privileges found in Québec civil law. Both award to labourers, builders, suppliers of materials and to others (i.e., miners, woodsmen,engineers, architects, innkeepers, proprietors of warehouses, etc.) the right to register their claim at the Land Titles Office. The registration, if it conforms to the many conditions imposed, confers to the claim for amounts due for services rendered or materials supplied the status of a secured or preferred claim and this claim becomes a charge against the real property for which the materials were supplied or services rendered.

Since such liens cannot attach to land owned by the Crown, federal and provincial laws provide that contractors and subcontractors engaged on the construction of public works must post a bond or furnish other sureties so that money is held by the Crown to ensure payment of the wages of the labourers. Generally, these acts also provide for holdbacks and enable the government to divert any money it owes to a contractor or sub-contractor to the payment of the employees' wages.

The posting of a bond may be required in other circumstances as well. In fact, most provinces have an act of general application that enables it to require employers: to post a bond to cover any future non-payment of

wages; to post a bond, year after year, until they have demonstrated their reliability in paying wages; to post a bond where there has been a complaint that an employer has failed to pay wages; or to post a bond where an employer has previously been convicted of failing to pay wages.

LIST OF ACTS AND REGULATIONS

Federal

Bank Act (R.S.C. 1985, c.B-1);

Bankruptcy Act (R.S.C. 1985, c.B-3);

Canadian Human Rights Act (R.S.C. 1985, c.H-6) ;
- Equal Wages Guidelines (SI/78-155);

Canada Labour Code (R.S.C. 1985, c.L-2);
- Canada Labour Standards Regulations (C.R.C. 1978, c.986, as amended);
- Minimum Hourly Wage Order 1986, (SOR/86-214);

Fair Wages and Hours of Labour Act (R.S.C. 1985, c.L-4);
- Fair Wages and Hours of Labour Regulations (C.R.C. 1978, c.1015);

Holidays Act (R.S.C. 1985, c.H-5);

Unemployment Insurance Act (R.S.C. 1985, c.U-1, as amended);

Wages Liability Act, (R.S.C. 1985, c.W-1);

Winding-Up Act, (R.S.C. 1985, c.W-11).

Alberta

The Employment Standards Code (S.A. 1988, c.E-10.2);

- Employment Standards Act Regulations:
  Minimum Wage Regulation (220/88, as amended);

- Hours of Work and Overtime Pay Regulations:
  (Ambulance Drivers and Attendants) (A. Reg. 77/81);
  (Field Services) (A. Reg. 73/81);
  (Highway and Rail Construction and Brush Clearing) (A. Reg. 79/81);
  (Irrigation Districts) (A. Reg. 75/81);
  (Nursery Industry) (A. Reg. 76/81);
  (Oilwell Servicing) (A. Reg. 74/81);
  (Taxi Cab Industry) (A. Reg. 80/81);
  (Trucking Industry) (A. Reg. 78/81);

- Construction Industry and Brush Clearing:
  Vacation Pay and General Holiday Pay Regulation (A. Reg. 81/81 as amended);
  Exemption Regulation (A. Reg. 83/81 as amended);

- Scherne Employment Regulation (A. Reg. 101/81);

- Adolescents and Young Persons Employment Regulation (A. Reg. 82/81);

The Child Welfare Act (S.A. 1984, c.C-8.1, as amended);

Coal Mines Safety Act (R.S.A. 80, c.C-18, as amended);

Family Day Act (S.A. 1989, c.F-5.1);

Individual's Rights Protection Act (R.S.A. 80, c.I-2, as amended);

School Act (S.A. 1988, c.S-3.1).

British Columbia

Employment Standards Act (S.B.C. 1980, c.10, as amended);
- Employment Standards Regulation (B.C. Reg. 37/81, as amended);

Human Rights Act (S.B.C. 1984, c.22, as amended);

British Columbia (continued)

School Act (R.S.B.C. 1979, c.375, as amended).

Manitoba

Child and Family Services Act (R.S.M. 1987, c.C80, as amended);

Construction Industry Wages Act (R.S.M. 1987, c.C190, as amended);

Employment Standards Act (R.S.M. 1987, c.E110, as amended);
- Regulations Respecting Minimum Wages and Working Conditions (M.R.R. E110-R1, as amended);
- Employment Termination Regulation (M. Reg. 101/87, as amended);

Pay Equity Act (R.S.M. 1987, c.P13);

Payment of Wages Act (R.S.M. 1987, c.P31);

Public Schools Act (R.S.M. 1987, c.P250, as amended);

Remembrance Day Act (R.S.M. 1987, c.R80);

Retail Businesses Holiday Closing Act (S.M. 1987-88, c.7);

Shops Regulations Act (R.S.M. 1987, c.S110);

Vacations with Pay Act (R.S.M. 1987, c.V20);

Wages Recovery Act (R.S.M. 1987, c.W10).

New Brunswick

Days of Rest Act (S.N.B. 1985, c.D-4.2);

Employment Standards Act (S.N.B. 1982, c.E-7.2, as amended);
- General Regulation (N.B. Reg. 85-179, as amended);
- Minimum Wage Regulation (N.B. Reg. 85-59, as amended);
- Minimum Wage for Categories of employees in Crown Construction Work Regulation (N.B. Reg. 88-245);
- Minimum Wage for Counsellors and Program Staff at Residential Summer Camps Regulation (N.B. Reg.87-85);

Human Rights Act (R.S.N.B. 1973, c.H-11, as amended);

New Brunswick Day Act (S.N.B. 1975, c.N-4.1);

Pay Equity Act (S.N.B. 1989, c.P-5.01);

Schools Act (R.S.N.B. 1973, c.S-5, as amended).

Newfoundland

Apprenticeship Act (R.S.N. 1970, c.12, as amended);

Child Welfare Act (S.N. 1972, c.37, as amended);

Labour Standards Act (S.N. 1977, c.52);
- Labour Standards Regulations, 1988 (N. Reg. 74/88, as amended);

Newfoundland Human Rights Code (R.S.N. 1970, c.262, as amended);

School Attendance Act, 1978 (S.N. 1978, c.78);

Shops Closing Act (S.N. 1977, c.107, as amended).

Nova Scotia

Labour Standards Code (R.S.N.S. 1989, c.246, as amended);
- Regulations (O.C. No. 76-1203 as amended);
- General Minimum Wage Order (N.S. Reg. 130/88);

Education Act (R.S.N.S. 1989, c.136, as amended);

Lord's Day Act (R.S.N.S. 1967, c.172, as amended);

Occupational Health and Safety Act (R.S.N.S. 1989, c.320);
- Construction Safety Regulations, 1970 (continued under this Act);

Pay Equity Act (R.S.N.S. 1989, c.41, as amended);

Remembrance Day Act (R.S.N.S. 1989, c.396);

Nova Scotia (continued)

Retail Business Uniform Closing Day Act (R.S.N.S. 1989, c.402, as amended).

Ontario

Education Act (R.S.O. 1980, c.129, as amended);

Employment Standards Act (R.S.O. 1980, c.137, as amended);
- Fruit, Vegetable and Tobacco Harvesters Regulation (R.R.O.1980, Reg. 284, as amended);
- Benefit Plans Regulation (R.R.O. 1980, Reg. 282, as amended);
- General Regulation (R.R.O. 1980, Reg. 285, as amended);
- Termination of Employment Regulation (R.R.O. 286, as amended);
- Domestics and Nannies (O. Reg. 308/87, as amended);

Occupational Health and Safety Act (R.S.O. 1980, c.321, as amended);
- Industrial Establishments (R.R.O. 1980, Reg. 692);
- Construction Projects (R.R.O. 1980, Reg. 691);
- Mines and Mining Plants (R.R.O. 1980, Reg. 694);

One Day's Rest in Seven Act (R.S.O. 1980, c.326);

Pay Equity Act, 1987 (S.O. 1987, c.34);

Retail Business Holidays Act (R.S.O. 1980, c.453, as amended).

Prince Edward Island

Apprenticeship and Trades Qualification Act (S.P.E.I. 1988, c.A.15)

Day of Rest Act (R.S.P.E.I. 1988, c.D.4);

Human Rights Act (R.S.P.E.I. 1988, H.12, as amended);

Labour Act (R.S.P.E.I. 1988, c.L-1, as amended);
- Minimum Wage Order 1/85 (EC 126/85, as amended;

Pay Equity Act, 1988 (R.S.P.E.I. 1988, P.2);

School Act (R.S.P.E.I. 1988, c.S-2);

Store Hours Act (R.S.P.E.I. 1988, c.S-8);

Youth Employment Act (S.P.E.I. 1990, c.66).

Québec

An Act respecting labour standards (R.S.Q. c.N-1.1;
- Regulation Respecting Labour Standards (R.R.Q. 1981, c.N-1.1, r.3, as amended);
- Ordinance No. 3, Vacation (O.C. 2122-72, as amended);
- Ordinance No. 4, General (O.C. 2123-72, as amended);
- Ordinance No. 14, 1973, Retail Food Trade (O.C. 783-73, as amended);

Charter of Human Rights and Freedoms (R.S.Q., c.C-12).

Civil Code (Masters and Servants, Sec.1665A to 1670);

Collective Agreement Decrees Act (R.S.Q. c.D-2).

An Act respecting hours and days of admission to commercial establishments (S.Q. 1990, c.30);

Education Act (R.S.Q. c.I-13.3, as amended);

Construction Safety Code (O.C. 1576-74);

An Act respecting labour relations, vocational training and manpower management in the construction industry (R.S.Q. c.R-20, as amended);

Manpower Vocational Training and Qualifications Act (R.S.Q. c.F-5).
- Regulation Respecting Collective Dismissal Advance Notice (O.C. No. 717-70);

National Holiday Act (R.S.Q. c.F-1.1, as amended);

Occupational Health and Safety Act (R.S.Q. c.S.2.1).

Saskatchewan

Education Act (R.S.S. 1978, supp. c.E-0.1, as amended);

Family Services Act (R.S.S. 1978, c.F-7, as amended);

Labour Standards Act (R.S.S. 1978, c.L-1, as amended);
- Labour Standards Regulations (S. Reg. 317/77, as amended);
- Minimum Wage Board Order No. 1 (1985) (R.R.S. c.L-1, Reg.2) (O.C. 613/85);
- Minimum Wage Board Order No. 2 (1981) (S. Reg. 203/80);
- Minimum Wage Board Order No. 3 (1981) (S. Reg. 204/80);

Lord's Day Act (R.S.S. 1978, c.L-34, as amended);

Wages Recovery Act (R.S.S. 1978, c.W-1, as amended);

Occupational Health and Safety Act Regulation (O.C. 437/81).

Northwest Territories

Fair Practices Act (R.S.N.W.T. 1974, c.F-2, as amended);

Labour Standards Act (R.S.N.W.T. 1974, c.L-1, as amended);
- Annual Vacations Regulations (C.O. No. 274-68);
- Labour Standards Wages Regulations (C.O. No. 140-74);
- Employment of Young Persons Regulations (C.O. No. 133-79);
- Maternity Leave Regulations (NWT R-069-88);
- Notice of Termination Exemptions Regulations (NWT R-012-89);

Wages Recovery Act (R.S.N.W.T. 1974, c.W-1, as amended).

Yukon Territory

Education Act (R.S.Y. 1990);

Employment Standards Act (R.S.Y. 1986, c.54, as amended);
- Minimum Wage Order No. 89/1, (O.I.C. 1990/36);
- Minimum Wage Regulations (O.I.C. 1988/63);
- General Exemption Regulation (O.I.C. 1984/344);
- Fair Wage Schedule (O.I.C. 1988/28);

School Act (R.S.Y. 1986, c.155);

Wages Recovery Act (R.O.Y.T. 1975, c.W-1).

LIST OF REFERENCES AND QUOTATIONS

[1] DYMOND, ALLAN M., **The Laws of Ontario Relating to Women and Children**, printed by Clarkson W. James, King's Printer, Toronto, 1923, pp. 130-131.

[2] IBID, p. 145.

[3] IBID, p. 145-146.

[4] IBID, p. 112.

[5] IBID, p. 113.

[6] CHRISTIE, INNIS, **Employment Law in Canada**, Canadian Legal Text Series, Butterworths, Toronto, 1980, p. 152.

[7] MILLER, GLENN W., **Government Policy Toward Labor: An Introduction to Labor Law**, Grid Series in Law, Grid Inc., Columbus, Ohio, U.S.A., 1975, p. 154.

[8] IBID, p. 165.

[9] DYMOND, ALLAN M., **The Laws of Ontario Relating to Women and Children**, p. 117.

[10] CHRISTIE, INNIS, **Employment Law in Canada**, p. 148.

[11] LORENTSEN, EDITH AND WOOLNER, EVELYN, **Fifty Years of Labour Legislation in Canada**, Legislation Branch, Labour Canada, September, 1950, p. 7.

[12] IBID, p. 13.

[13] CHRISTIE, INNIS, **Employment Law in Canada**, p. 143.

[14] NIEMANN, LINDSAY, **Wage Discrimination and Women Workers: The Move Towards Equal Pay for Work of Equal Value**, Women's Bureau, Labour Canada, 1984, p. 5.

[15] See, for example: SHAPIRO, C.M. and STELCNER, M., "The Persistence of the Male-Female Earnings Gap in Canada, 1970-1980: The Impact of Equal Pay Laws and Language Policies", in **Canadian Public Policy**, Vol. XIII, No. 4, December, 1987, pp. 462-475; Robb, R.E., "Equal Pay for Work of Equal Value: Issues and Policies", in **Canadian Public Policy**, Vol. XIII, No. 4, December, 1987, pp. 445-461; Armstrong, Pat and Hugh Armstrong, **The Double Ghetto**, Toronto, McClelland and Stewart, 1978.

[16] CHRISTIE, INNIS, **Employment Law in Canada**, p. 170-171.

[17] IBID, p. 170.

[18] IBID, p. 171.

[19] Canada, Department of Labour, Legislation Branch, **Labour Legislation of the Past Decade: A Review of Developments in Canadian Labour Legislation in 1951-1960 Period**, 1960, p. 17.

[20] CHRISTIE, INNIS, **Employment Law in Canada**, p. 177.

[21] Canada, Department of Labour, Women's Bureau and the Intergovernmental Committee on Women in Employment, **Maternity Leave in Canada**, February, 1980, p. 30.

[22] CHRISTIE, INNIS, **Employment Law in Canada**, p. 311.

[23] IBID, p. 348.

[24] GRAY, OWEN, **Wage Protection**, Legislative Research Branch, Labour Canada, August 1973, p. 36.

[25] CHRISTIE, INNIS, **Employment Law in Canada**, p. 375.

[26] GRAY, OWEN, **Wage Protection**, p. 36.

[27] CHRISTIE, INNIS, **Employment Law in Canada**, pp. 439-440.

[28] IBID, pp. 456.